



# Livingston City Commission

## Agenda

March 21, 2017

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 from regular commission meeting 3.7.17** Page 4
- B. **CONSENT – Approve Bills and Claims 1<sup>st</sup> half of March 2017.** Page 7
- C. **CONSENT - Ratify Claim** Page 16

**6. Proclamations**

**7. Scheduled Public Comment**

**8. Public Hearings**

**9. Ordinances**

**10. Resolutions**

- A. **RESOLUTION NO. 4719 - 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, 2017 TO MARCH 31, 2018.** Page 17
- B. **RESOLUTION NO. 4722 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING DONATION OF A FIRETRUCK TO RW & JW ENTERPRISES FOR DISPLAY AND AS CONSIDERATION FOR IN KIND SERVICES.** Page 31
- C. **RESOLUTION NO. 4721 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA AUTHORIZING THE CHAIRMAN TO SIGN THE AMENDED PERPETUAL RIGHT-OF-WAY EASEMENT WITH VISTA, LLC FOR THE PURPOSES OF CONSTRUCTION, MAINTENANCE, OPERATION, SERVICE, REPAIR, AND REPLACEMENT OF CITY STREETS, SANITARY SEWERS, AND WATER LINES.** Page 34
- D. **RESOLUTION NO. 4720 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING THE CITY MANAGER TO AMEND THE CITY'S PROFESSIONAL SERVICES AGREEMENT WITH ADVANCED ENGINEERING AND ENVIRONMENTAL SERVICES, INC. (AE2S) FOR WATER TREATMENT PLANT UPGRADE (WWTP) DESIGN, AND TO ENTER INTO AN AGREEMENT FOR CONSTRUCTION ADMINISTRATION SERVICES ON THE WATER RECLAMATION FACILITY PROJECT.**Page 44

11. Action Items

- A. DISCUSS/APPROVE/DENY - Joe Brooks Chapter of Trout Unlimited request for waiver of garbage disposal fees for Yellowstone River Clean Up
- B. DISCUSS/APPROVE/DENY - Front Street Trail Connector Grant return Page 79
- C. DISCUSS/APPROVE/DENY- Setting budget meeting in mid April for General Fund review

12. City Manager Comment

13. City Commission Comments

14. Public Comments

*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).*

15. Adjournment

**Calendar of Events**

March 21, 2017 - 6:30 p.m. - City Commission regular meeting, Community Room, City/County Complex

March 22, 2017 - 6:30 p.m. - Parks and Trails Committee regular meeting, Community Room, City/County Complex

March 23, 2017 - 11:00 a.m. - 911 Committee regular meeting, Community Room, City/County Complex

March 29, 2017 - National Mom and Pop Business Owners Day

April 4, 2017 - 6:30 p.m. - City Commission regular meeting, Community Room, City/County Complex

April 5, 2017 - 4:00 p.m. - City County Joint Meeting, MSU Extension Office 119 South 3rd Street, Livingston

April 6, 2017 - 5:30 p.m. - County Growth Policy Public Meeting, Community Room, City/County Complex

April 10, 2017 - 3:30 p.m. - Historic Preservation Regular Meeting, Community Room, City/County Complex

April 18, 2017 - 6:30 p.m. - City Commission 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 from regular commission meeting 3.7.17

**MINUTES**

**Livingston City Commission  
March 7, 2017  
6:30 p.m.  
City- County Complex, Community Room**

- 1. Call to Order**
- 2. Roll Call**
  - Bennett, Hoglund, Friedman, Schwarz, and Sandberg were present.
- 3. Moment of Silence**
- 4. Pledge of allegiance**
- 5. Consent Items (00:03:09)**
  - A. CONSENT - Approve minutes from regular commission meeting 2.21.17**
  - B. CONSENT - Approve Bills & Claims**
    - Sandberg requested Consent Items C – F be pulled from Consent Items.
    - Sandberg made a motion to approve Consent Items A and B. Friedman seconded.
      - All in favor, motion passed 5-0.
  - C. CONSENT - Approve URA grant approval for Triple M Cooking LLC d/b/a Pinky's Cafe in the amount of \$23,000.00**
  - D. CONSENT - Approve URA grant approval to Out of the Blue in the amount of \$15,270.00**
  - E. CONSENT - Approve URA grant approval for Cerberus Properties structural wall in the amount of \$4,400.00**
    - Schwarz made a motion to approve Consent Items C – E. Friedman seconded.
      - All in favor, motion passed 5-0.
  - F. CONSENT - Approve URA grant approval to Sleeping Giant Middle School in the amount of \$6,000.00**
    - Friedman made a motion to approve Consent Item F. Schwarz seconded.
      - Motion passed 4-1. Bennett opposed.
- 6. Proclamations**
- 7. Scheduled Public Comment**

**8. Public Hearings**

**A. PUBLIC HEARING - Public Comment on Proposed Northtown Livingston LLC request for Zone Change (00:11:00)**

- Bill Muhlenfel and Matt Fours made comments (00:12:00)
- Chairperson Bennett called for a recess (00:31:29)
- Commission meeting reconvened (00:39:49)
- Friedman made a motion to reschedule the Public Hearing to April 18, 2017 after the City Attorney provides legal clarification regarding the legality of moving forward with the public hearing, including presentation from the developer and to make decisions based on the same. Schwarz seconded.
  - Motion passed 4-0. Sandberg abstained.

**9. Ordinances**

**10. Resolutions**

**11. Action Items**

**A. DISCUSS/APPROVE/DENY - Northtown Livingston, LLC request for zone change**

**B. DISCUSS/APPROVE/DENY - Proposed Northtown Livingston LLC Subdivision**

- Hogleund made a motion to table Action Items A and B until the April 18 regular commission meeting. Friedman seconded.
  - Motion passed 4-0. Sandberg abstained.

**12. City Manager Comment (00:55:19)**

**13. City Commission Comments**

- Sandberg made comments (00:56:10)
- Schwarz made comments (00:58:26)
- Hogleund made comments (00:58:52)
- Bennett made comments (00:59:45)

**14. Public Comments**

- Leslie Feigel made comments (01:00:48)

**15. Adjournment (01:03:39) p.m.**

**Backup material for agenda item:**

B. Please enter your agenda item text here.

03/15/17  
14:48:11

CITY OF LIVINGSTON  
Claim Approval by Fund, Account  
For the Accounting Period: 3/17

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Report ID: AP100Z

For doc #s from 31051 to 31457, Operating Cash

Fund	Department Name (Account)	Vendor #/Name	Description	Amount
1000 GENERAL	410130 CITY COMMISSION	3248 AGENDA PAL	Subscription Service	150.00
1000 GENERAL	410130 CITY COMMISSION	146 LIVINGSTON ENTERPRISE	Special Mtg Vault pr	60.50
1000 GENERAL	410130 CITY COMMISSION	146 LIVINGSTON ENTERPRISE	Skate Park Design	21.00
1000 GENERAL	410130 CITY COMMISSION	146 LIVINGSTON ENTERPRISE	Historic Pres. Comm	104.50
1000 GENERAL	410130 CITY COMMISSION	146 LIVINGSTON ENTERPRISE	Skate Park Mtg	24.00
1000 GENERAL	410540 FINANCE OFFICER	2705 CITY OF LIVINGSTON	Interview supplies	64.00
1000 GENERAL	410540 FINANCE OFFICER	3184 MASTERCARD	GFOA CAFR Award App	435.00
1000 GENERAL	410540 FINANCE OFFICER	3184 MASTERCARD	CFO Departure lunch	54.11
1000 GENERAL	410540 FINANCE OFFICER	3184 MASTERCARD	Government Newslette	150.00
1000 GENERAL	410550 ACCOUNTING	153 POWERS, DIANE	Bank & errans Jan &	56.00
1000 GENERAL	411030 PLANNER	146 LIVINGSTON ENTERPRISE	Historic Preserv.Boa	93.50
1000 GENERAL	411030 PLANNER	146 LIVINGSTON ENTERPRISE	Map Amendment Chap 3	45.00
1000 GENERAL	411030 PLANNER	146 LIVINGSTON ENTERPRISE	Map Amendment Chap	51.00
1000 GENERAL	411030 PLANNER	146 LIVINGSTON ENTERPRISE	PH Mark Manseau	48.00
1000 GENERAL	411030 PLANNER	146 LIVINGSTON ENTERPRISE	PH Beth Woodson	51.00
1000 GENERAL	411030 PLANNER	3184 MASTERCARD	Creamer	1.90
1000 GENERAL	411030 PLANNER	3184 MASTERCARD	Paper Towels	15.99
1000 GENERAL	411030 PLANNER	3184 MASTERCARD	Hot Cups	37.26
1000 GENERAL	411030 PLANNER	3387 J & H, Inc.	Canon copier - maint	16.57
1000 GENERAL	411030 PLANNER	3298 EXEC U CARE SERVICES,	Cleaning in Feb	80.00
1000 GENERAL	411030 PLANNER	162 CENTURYLINK	Planning Dept.	81.38
1000 GENERAL	411100 CITY ATTORNEY	3471 COURTNEY LAWELLIN, PC	First Half- March In	6,044.50
1000 GENERAL	411230 FACILITY MAINTENANCE	147 LIVINGSTON UTILITY	City/County complex	335.69
1000 GENERAL	411230 FACILITY MAINTENANCE	147 LIVINGSTON UTILITY	City of Livingston S	46.16
1000 GENERAL	411230 FACILITY MAINTENANCE	147 LIVINGSTON UTILITY	Ciity of Livingston	56.18
1000 GENERAL	411230 FACILITY MAINTENANCE	147 LIVINGSTON UTILITY	110 S. B Street-Irri	0.00
1000 GENERAL	411230 FACILITY MAINTENANCE	147 LIVINGSTON UTILITY	City/County Complex	409.01
1000 GENERAL	411230 FACILITY MAINTENANCE	147 LIVINGSTON UTILITY	Star Road	46.16
1000 GENERAL	411230 FACILITY MAINTENANCE	147 LIVINGSTON UTILITY	B Street	56.18
1000 GENERAL	411230 FACILITY MAINTENANCE	3407 LIVINGSTON DAYCARE, LLC	Parking Lot Lease -	900.00
1000 GENERAL	411230 FACILITY MAINTENANCE	63 HOUSE OF CLEAN	37% Janitorial suppl	29.19
1000 GENERAL	411230 FACILITY MAINTENANCE	63 HOUSE OF CLEAN	37% Janitorial suppl	4.77
1000 GENERAL	411230 FACILITY MAINTENANCE	63 HOUSE OF CLEAN	37% Janitorial suppl	16.63
1000 GENERAL	411230 FACILITY MAINTENANCE	63 HOUSE OF CLEAN	37% Janitorial suppl	149.98
1000 GENERAL	411230 FACILITY MAINTENANCE	63 HOUSE OF CLEAN	37% Janitorial suppl	66.69
1000 GENERAL	411230 FACILITY MAINTENANCE	63 HOUSE OF CLEAN	37% Janitorial suppl	9.53
1000 GENERAL	411230 FACILITY MAINTENANCE	102 INDUSTRIAL TOWEL	Rug Maintenance	37.70
1000 GENERAL	411230 FACILITY MAINTENANCE	272 PARK COUNTY	37% Misc Maint suppl	156.69
1000 GENERAL	411230 FACILITY MAINTENANCE	3023 RICK'S REFRIGERATION,	37% Quaterly Filters	176.86
1000 GENERAL	411230 FACILITY MAINTENANCE	1522 DAVE'S LOCK & KEY	37% Lock modiciation	105.45
1000 GENERAL	411230 FACILITY MAINTENANCE	1522 DAVE'S LOCK & KEY	37% Key blank	2.96
1000 GENERAL	411230 FACILITY MAINTENANCE	102 INDUSTRIAL TOWEL	Rug Maintenance	32.00
1000 GENERAL	411230 FACILITY MAINTENANCE	2838 DOUG PARISI INC	37% Replace Toilet -	163.17
1000 GENERAL	411230 FACILITY MAINTENANCE	1658 KONE INC.	37% Elevator Mainten	555.13
1000 GENERAL	411300 CENTRAL COMMUNICATIONS	272 PARK COUNTY	City	106.25
1000 GENERAL	411300 CENTRAL COMMUNICATIONS	3440 CHARTER COMMUNICATIONS	110 S. B St	885.97
1000 GENERAL	411300 CENTRAL COMMUNICATIONS	3440 CHARTER COMMUNICATIONS	414 E. Callender Int	3,118.80
1000 GENERAL	411300 CENTRAL COMMUNICATIONS	162 CENTURYLINK	Finance Office 110	387.13
1000 GENERAL	411700 CENTRAL STORES	1196 MAILFINANCE	Lease Postage Machin	165.38
1000 GENERAL	411700 CENTRAL STORES	54 GATEWAY OFFICE SUPPLY	Office Supplies	63.14
1000 GENERAL	411700 CENTRAL STORES	2705 CITY OF LIVINGSTON	Office supplies	5.79
1000 GENERAL	411700 CENTRAL STORES	2705 CITY OF LIVINGSTON	Postage	6.65



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CITY OF LIVINGSTON  
Claim Approval by Fund, Account  
For the Accounting Period: 3/17

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Report ID: AP100Z

For doc #s from 31051 to 31457, Operating Cash

Fund	Department Name (Account)	Vendor #/Name	Description	Amount
1000 GENERAL	411700 CENTRAL STORES	1783 J & H OFFICE EQUIPMENT	Canon Copier lease	213.00
1000 GENERAL	411700 CENTRAL STORES	2907 SHI INTERNATIONAL CORP.	2016 Windows -Financ	338.35
1000 GENERAL	411700 CENTRAL STORES	3184 MASTERCARD	2 Hole Punch	11.23
1000 GENERAL	411700 CENTRAL STORES	3184 MASTERCARD	Stamps.com Monthly F	24.99
1000 GENERAL	411700 CENTRAL STORES	3184 MASTERCARD	USPS Postage stamps	100.00
1000 GENERAL	411700 CENTRAL STORES	292 UPS STORE #2420, THE	Evidence to Crime La	9.71
1000 GENERAL	411700 CENTRAL STORES	3353 STORY DISTRIBUTING	Diesel fuel 362 gal	738.12
1000 GENERAL	411700 CENTRAL STORES	3353 STORY DISTRIBUTING	Diesel fuel 325 gal,	725.78
1000 GENERAL	411700 CENTRAL STORES	1783 J & H OFFICE EQUIPMENT	Canon Copier lease	302.82
1000 GENERAL	420100 OPERATING ACCOUNT	272 PARK COUNTY	Police	78.33
1000 GENERAL	420100 OPERATING ACCOUNT	3184 MASTERCARD	K-9 courtroom traini	175.00
1000 GENERAL	420100 OPERATING ACCOUNT	3184 MASTERCARD	K-9 Conference - Ema	295.00
1000 GENERAL	420100 OPERATING ACCOUNT	402 ALPINE ELECTRONICS RADIO	Flash Drive	64.95
1000 GENERAL	420100 OPERATING ACCOUNT	55 LIVINGSTON HEALTH	DUI Blood draw	28.00
1000 GENERAL	420100 OPERATING ACCOUNT	22 ALL SERVICE TIRE &	Vehicle Service	40.00
1000 GENERAL	420100 OPERATING ACCOUNT	2426 GRANITE TECHNOLOGY	IT support - Feb.	54.00
1000 GENERAL	420100 OPERATING ACCOUNT	294 CHAPPELL'S BODY SHOP,	Car wash tokens	25.00
1000 GENERAL	420100 OPERATING ACCOUNT	2671 COMDATA	Fuel - February	1,104.84
1000 GENERAL	420100 OPERATING ACCOUNT	3376 TRANSUNION RISK &	Investigative search	29.00
1000 GENERAL	420100 OPERATING ACCOUNT	3237 WHISTLER TOWING, LLC	Abandon Vehicle Olds	100.00
1000 GENERAL	420100 OPERATING ACCOUNT	2213 SALT LAKE WHOLESALE	Dept Ammunition	1,702.61
1000 GENERAL	420100 OPERATING ACCOUNT	3455 INDUSTRIAL COMM & ELEC OF	Move Radio in office	86.25
1000 GENERAL	420100 OPERATING ACCOUNT	879 VERIZON WIRELESS	Air Cards - Feb.	406.35
1000 GENERAL	420400 OPERATING ACCOUNTS	282 LIVINGSTON TRUE VALUE	Screws	0.76
1000 GENERAL	420400 OPERATING ACCOUNTS	3223 BERG'S OVERHEAD DOOR LLC	Overhead door repair	155.00
1000 GENERAL	420400 OPERATING ACCOUNTS	272 PARK COUNTY	Fire 50%	48.70
1000 GENERAL	420400 OPERATING ACCOUNTS	879 VERIZON WIRELESS	Training Officer	50.06
1000 GENERAL	420400 OPERATING ACCOUNTS	879 VERIZON WIRELESS	Fired Chief	76.84
1000 GENERAL	420400 OPERATING ACCOUNTS	879 VERIZON WIRELESS	Captain's phone	150.96
1000 GENERAL	420400 OPERATING ACCOUNTS	2666 MUNICIPAL EMERGENCY	Radio Harness	58.00
1000 GENERAL	420400 OPERATING ACCOUNTS	1390 KEN'S EQUIPMENT REPAIR,	Engine 1 repair	443.60
1000 GENERAL	420400 OPERATING ACCOUNTS	1390 KEN'S EQUIPMENT REPAIR,	Engine 1 repair	355.20
1000 GENERAL	420400 OPERATING ACCOUNTS	2671 COMDATA	February Fuel	256.13
1000 GENERAL	420400 OPERATING ACCOUNTS	3184 MASTERCARD	Fire Officer 1 Cours	295.00
1000 GENERAL	420400 OPERATING ACCOUNTS	3184 MASTERCARD	Fire Engineering Sub	69.00
1000 GENERAL	420402 RESERVE AMB/FIREFIGHTERS	3184 MASTERCARD	Reserve Uniform	191.98
1000 GENERAL	420403 BUILDING INSPECTION	2671 COMDATA	Fuel	66.54
1000 GENERAL	430100 PUBLIC WORKS ADMIN	3184 MASTERCARD	Pizza - Floodcrew	33.18
1000 GENERAL	430100 PUBLIC WORKS ADMIN	3184 MASTERCARD	Beverages	3.10
1000 GENERAL	430100 PUBLIC WORKS ADMIN	3184 MASTERCARD	Paper Towels	16.00
1000 GENERAL	430100 PUBLIC WORKS ADMIN	3184 MASTERCARD	Hot Cups	37.26
1000 GENERAL	430930 CEMETERY OPERATING	23 CARQUEST AUTO PARTS	Wipers	19.94
1000 GENERAL	430930 CEMETERY OPERATING	23 CARQUEST AUTO PARTS	Mower shop	399.18
1000 GENERAL	430930 CEMETERY OPERATING	23 CARQUEST AUTO PARTS	Civic Center mowers	74.20
1000 GENERAL	430950 ROAMING OPERATING	147 LIVINGSTON UTILITY	Parks Garb & Cemeter	230.98
1000 GENERAL	430950 ROAMING OPERATING	147 LIVINGSTON UTILITY	Soccer Fieldhouse	40.20
1000 GENERAL	430950 ROAMING OPERATING	147 LIVINGSTON UTILITY	Parks & cemetery	272.34
1000 GENERAL	430950 ROAMING OPERATING	147 LIVINGSTON UTILITY	Soccer Fieldhouse	40.20
1000 GENERAL	430950 ROAMING OPERATING	879 VERIZON WIRELESS	Bill Jones	22.92
1000 GENERAL	430950 ROAMING OPERATING	3184 MASTERCARD	CPO class reg	295.00
1000 GENERAL	430950 ROAMING OPERATING	3184 MASTERCARD	Gas Cartridges	700.73
1000 GENERAL	430950 ROAMING OPERATING	3184 MASTERCARD	Phone Charger	19.99

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CITY OF LIVINGSTON  
Claim Approval by Fund, Account  
For the Accounting Period: 3/17

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For doc #s from 31051 to 31457, Operating Cash

Fund	Department Name (Account)	Vendor #/Name	Description	Amount
1000 GENERAL	430950 ROAMING OPERATING	2671 COMDATA	Fuel	381.97
1000 GENERAL	430950 ROAMING OPERATING	2087 WISPWEST.NET	Internet	24.95
1000 GENERAL	430950 ROAMING OPERATING	2087 WISPWEST.NET	Internet	44.95
1000 GENERAL	440640 ANIMAL CONTROL SERVICES	90 COLMEY VETERINARY	Letter - Pitbulls	70.00
1000 GENERAL	440640 ANIMAL CONTROL SERVICES	90 COLMEY VETERINARY	Cat Boarding	33.00
1000 GENERAL	440640 ANIMAL CONTROL SERVICES	90 COLMEY VETERINARY	Cat- Vet care, shots	103.86
1000 GENERAL	440640 ANIMAL CONTROL SERVICES	3645 SLEEPING GIANT ANIMAL	Pitbull Attach	179.00
1000 GENERAL	440640 ANIMAL CONTROL SERVICES	3184 MASTERCARD	Mutt Mitts - 12 case	1,029.50
1000 GENERAL	440640 ANIMAL CONTROL SERVICES	2671 COMDATA	Fuel	55.68
1000 GENERAL	460430 PARKS OPERATING	26 LIVINGSTON ACE HARDWARE	- Warming hut roof	59.99
1000 GENERAL	460430 PARKS OPERATING	26 LIVINGSTON ACE HARDWARE	- Bleachers	10.39
1000 GENERAL	460430 PARKS OPERATING	26 LIVINGSTON ACE HARDWARE	- Chainsaw tools	76.66
1000 GENERAL	460430 PARKS OPERATING	26 LIVINGSTON ACE HARDWARE	- Shop	65.96
1000 GENERAL	460430 PARKS OPERATING	26 LIVINGSTON ACE HARDWARE	- Shop tools	64.97
1000 GENERAL	460430 PARKS OPERATING	776 KENYON NOBLE	Baseball bleachers	47.60
1000 GENERAL	460430 PARKS OPERATING	776 KENYON NOBLE	Bleachers	26.70
1000 GENERAL	460430 PARKS OPERATING	3040 MIDWAY RENTAL, INC.	Chainsaw	61.90
1000 GENERAL	460430 PARKS OPERATING	15 JOHN DEERE FINANCIAL	Z truck mower blades	405.60
1000 GENERAL	460430 PARKS OPERATING	15 JOHN DEERE FINANCIAL	Mowers	237.60
1000 GENERAL	460445 SWIMMING POOL AND SPLASH	2087 WISPWEST.NET	Pool internet	10.00
1000 GENERAL	460445 SWIMMING POOL AND SPLASH	2087 WISPWEST.NET	Pool Internet	10.00
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	2331 TROUT UNLIMITED	Refund - Rental fees	80.00
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	879 VERIZON WIRELESS	City Pool	33.41
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Facebook Ad	40.00
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Albertson's	133.95
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Copper Johns Employe	672.60
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	BDH Gift shop	27.50
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Walmart	36.34
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Crown Awards	226.03
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Target- Skate Night	14.00
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Amazon- Concessions	12.74
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Amazon- Concessions	148.01
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Survey Monkey - O St	26.00
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Amazon Concession	122.56
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Albertson's Office W	4.90
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Amazon Scorebook Men	15.79
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Amazon Concesssion	71.13
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Target - Camp/Skate	35.98
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Custom Ink-Men's BB	154.00
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Survey Monkey-Rec De	26.00
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Amazon-Men's BB supp	26.50
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Western Drug - Conce	10.38
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Town & Country - con	19.79
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3184 MASTERCARD	Amazon - Paper towel	26.12
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	54 GATEWAY OFFICE SUPPLY	Office supplies - Ci	18.73
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3576 BARKMAN, ASHLEY	Skake Night staff 53	530.00
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	3575 ROOPE, KYRA	Skake Night staff 24	240.00
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	999999 KOZERA, ERIC	Yth BB Referee 2017	456.00
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	999999 NELSON, BEN	Yth BB Referee 2017	263.00
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	999999 NETLEY, MATT	Yth BB Referee 2017	24.00
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	999999 OPITZ, KELLI	Yth BB Referee 2017	132.00
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	999999 PETERSON, BROCK	Yth BB Referee 2017	122.00

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CITY OF LIVINGSTON  
Claim Approval by Fund, Account  
For the Accounting Period: 3/17

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For doc #s from 31051 to 31457, Operating Cash

Fund	Department Name (Account)	Vendor #/Name	Description	Amount
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	999999 STENSETH, TRISTAN	Yth BB Referee 2017	245.00
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	999999 WADDELL, JACK	Yth BB Referee 2017	173.00
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	999999 WADDELL, JOHN	Yth BB Referee 2017	144.00
1000 GENERAL	460449 ADMINISTRATIVE SERVICES	999999 WALKER, DALTON	Yth BB Referee 2017	106.00
1000 GENERAL	510700 STATE MANDATED	2346 MONTANA DEPT OF	Swim Pool Outfall	1,125.00
Total for Fund:				35,399.51
2220 LIBRARY	460100 LIBRARY SERVICES	3184 MASTERCARD	Boos - Amazon	16.30
2220 LIBRARY	460100 LIBRARY SERVICES	3184 MASTERCARD	MLA Annual conferenc	145.00
2220 LIBRARY	460100 LIBRARY SERVICES	3184 MASTERCARD	MLA Annual conferenc	50.00
2220 LIBRARY	460100 LIBRARY SERVICES	3184 MASTERCARD	MLA Annual conferenc	176.00
2220 LIBRARY	460100 LIBRARY SERVICES	3184 MASTERCARD	Stamps.com - Stamps	100.00
2220 LIBRARY	460100 LIBRARY SERVICES	3184 MASTERCARD	Monthly Charge - Sta	15.99
Total for Fund:				503.29
2300 COMMUNICATIONS/DISPATCH	420160 DISPATCH/COMMUNICATIONS	272 PARK COUNTY	Dispatch	36.44
2300 COMMUNICATIONS/DISPATCH	420160 DISPATCH/COMMUNICATIONS	529 GUY'S GLASS, INC.	37% Bronze Panic Sys	1,036.00
2300 COMMUNICATIONS/DISPATCH	420160 DISPATCH/COMMUNICATIONS	2999 TEAR IT UP L.L.C.	Shred documents 276#	73.20
2300 COMMUNICATIONS/DISPATCH	420160 DISPATCH/COMMUNICATIONS	2268 BIG BEAR CONTRACTING, LLC	Dispatch Remodel	18,000.00
Total for Fund:				19,145.64
2310 TAX INCREMENT DISTRICT -	470300 ECONOMIC DEVELOPMENT	146 LIVINGSTON ENTERPRISE	URA mtg	18.00
Total for Fund:				18.00
2399 IMPACT FEES	430240 STREET DEPARTMENT	170 A-CORE, INC.	Miles Lane & E. Gall	606.50
Total for Fund:				606.50
2500 STREET MAINTENANCE	430220 FACILITIES/CITY SHOP	147 LIVINGSTON UTILITY	Street Shop	50.78
2500 STREET MAINTENANCE	430220 FACILITIES/CITY SHOP	147 LIVINGSTON UTILITY	Street Shop	47.10
2500 STREET MAINTENANCE	430220 FACILITIES/CITY SHOP	3184 MASTERCARD	Pizza - Floodcrew	33.18
2500 STREET MAINTENANCE	430220 FACILITIES/CITY SHOP	3184 MASTERCARD	Beverages	3.10
2500 STREET MAINTENANCE	430220 FACILITIES/CITY SHOP	3184 MASTERCARD	Creamer	1.90
2500 STREET MAINTENANCE	430220 FACILITIES/CITY SHOP	3184 MASTERCARD	Paper Towels	15.99
2500 STREET MAINTENANCE	430220 FACILITIES/CITY SHOP	3184 MASTERCARD	Hot Cups	37.26
2500 STREET MAINTENANCE	430220 FACILITIES/CITY SHOP	3298 EXEC U CARE SERVICES,	Cleaning in Feb	80.00
2500 STREET MAINTENANCE	430240 STREET DEPARTMENT	3184 MASTERCARD	Iphone Accessories	49.98
2500 STREET MAINTENANCE	430240 STREET DEPARTMENT	26 LIVINGSTON ACE HARDWARE -	Blade	45.98
2500 STREET MAINTENANCE	430240 STREET DEPARTMENT	26 LIVINGSTON ACE HARDWARE -	Wrench & glue	44.97
2500 STREET MAINTENANCE	430240 STREET DEPARTMENT	26 LIVINGSTON ACE HARDWARE -	supplies	37.15
2500 STREET MAINTENANCE	430240 STREET DEPARTMENT	23 CARQUEST AUTO PARTS	Filters	188.43
2500 STREET MAINTENANCE	430240 STREET DEPARTMENT	23 CARQUEST AUTO PARTS	Rep & Maint. vehicle	26.99
2500 STREET MAINTENANCE	430240 STREET DEPARTMENT	2671 COMDATA	Fuel	406.42
2500 STREET MAINTENANCE	430240 STREET DEPARTMENT	3387 J & H, Inc.	Canon copier - maint	16.57
2500 STREET MAINTENANCE	430240 STREET DEPARTMENT	1390 KEN'S EQUIPMENT REPAIR,	Grader	50.00
2500 STREET MAINTENANCE	430240 STREET DEPARTMENT	1390 KEN'S EQUIPMENT REPAIR,	Flow truck	135.00
2500 STREET MAINTENANCE	430240 STREET DEPARTMENT	2863 KIMBALL MIDWEST	Supplies	47.00
2500 STREET MAINTENANCE	430240 STREET DEPARTMENT	12 NORMONT EQUIPMENT	Supplies	849.90

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CITY OF LIVINGSTON  
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Fund	Department Name (Account)	Vendor #/Name	Description	Amount
2500 STREET MAINTENANCE	430240 STREET DEPARTMENT	3293 BLACKFOOT COMMUNICATIONS	Internet	49.99
			Total for Fund:	2,217.69
2820 GAS TAX	430240 STREET DEPARTMENT	2904 FISHER SAND AND GRAVEL	Concrete	252.00
			Total for Fund:	252.00
3200 WEST END TAX INCREMENT	490200 REVENUE BONDS	26 LIVINGSTON ACE HARDWARE	supplies	23.98
3200 WEST END TAX INCREMENT	490200 REVENUE BONDS	2874 HD SUPPLY WATERWORKS,	Starlo Booster stati	269.99
3200 WEST END TAX INCREMENT	490200 REVENUE BONDS	776 KENYON NOBLE	Starlo	23.19
3200 WEST END TAX INCREMENT	490200 REVENUE BONDS	776 KENYON NOBLE	Starlo	41.77
3200 WEST END TAX INCREMENT	490200 REVENUE BONDS	10 MOBILE REPAIR & WELDING,	Starlo	104.92
3200 WEST END TAX INCREMENT	490200 REVENUE BONDS	15 JOHN DEERE FINANCIAL	Bolts	103.75
3200 WEST END TAX INCREMENT	490200 REVENUE BONDS	15 JOHN DEERE FINANCIAL	Bolts	108.40
3200 WEST END TAX INCREMENT	490200 REVENUE BONDS	15 JOHN DEERE FINANCIAL	Bolts	14.80
			Total for Fund:	690.80
5210 WATER OPERATING	343021 METERED WATER SALES	999999 POTTER, KATHRYN	Over payment on acct	0.41
5210 WATER OPERATING	430510 WATER ADMINISTRATION	3184 MASTERCARD	Pizza - Floodcrew	33.18
5210 WATER OPERATING	430510 WATER ADMINISTRATION	3184 MASTERCARD	Beverages	3.11
5210 WATER OPERATING	430510 WATER ADMINISTRATION	3184 MASTERCARD	Creamer	1.89
5210 WATER OPERATING	430510 WATER ADMINISTRATION	3184 MASTERCARD	Paper Towels	15.99
5210 WATER OPERATING	430510 WATER ADMINISTRATION	3184 MASTERCARD	Hot Cups	37.26
5210 WATER OPERATING	430510 WATER ADMINISTRATION	3298 EXEC U CARE SERVICES,	Cleaning in Feb	80.00
5210 WATER OPERATING	430515 WATER SERVICES	3184 MASTERCARD	Optical level	239.99
5210 WATER OPERATING	430515 WATER SERVICES	26 LIVINGSTON ACE HARDWARE	supplies	55.94
5210 WATER OPERATING	430515 WATER SERVICES	2671 COMDATA	Fuel	678.65
5210 WATER OPERATING	430515 WATER SERVICES	3387 J & H, Inc.	Canon copier - maint	16.56
5210 WATER OPERATING	430515 WATER SERVICES	16 PARISI WESTERN PLUMBING &	Supplies	11.50
5210 WATER OPERATING	430515 WATER SERVICES	16 PARISI WESTERN PLUMBING &	Supplies	23.90
5210 WATER OPERATING	430515 WATER SERVICES	3472 UTILITIES UNDERGROUND	Utility locate notif	29.05
5210 WATER OPERATING	430520 FACILITIES/CAPITAL OUTLAY	147 LIVINGSTON UTILITY	Utility shop	123.52
5210 WATER OPERATING	430520 FACILITIES/CAPITAL OUTLAY	147 LIVINGSTON UTILITY	Utility Shop	123.52
5210 WATER OPERATING	430520 FACILITIES/CAPITAL OUTLAY	146 LIVINGSTON ENTERPRISE	Water Reclamantion u	306.00
5210 WATER OPERATING	430520 FACILITIES/CAPITAL OUTLAY	98 GRAYBEAL'S ALL SERVICE	Boiler maintenance	34.00
5210 WATER OPERATING	430520 FACILITIES/CAPITAL OUTLAY	2268 BIG BEAR CONTRACTING, LLC	Public works remodel	682.60
5210 WATER OPERATING	430570 CUSTOMER ACCTG/COLLECTION	1196 MAILFINANCE	Lease Postage Machin	165.39
5210 WATER OPERATING	430570 CUSTOMER ACCTG/COLLECTION	2958 NEOFUNDS BY NEOPOST USA,	Postage	149.84
5210 WATER OPERATING	430570 CUSTOMER ACCTG/COLLECTION	3633 BILLING DOCUMENT	Online Monthly Maint	23.33
			Total for Fund:	2,835.63
5310 SEWER OPERATING	343031 SEWER SERVICE CHARGES	999999 POTTER, KATHRYN	Over payment on acct	0.41
5310 SEWER OPERATING	430610 SEWER ADMINISTRATION	3298 EXEC U CARE SERVICES,	Cleaning in Feb	80.00
5310 SEWER OPERATING	430620 FACILITIES	147 LIVINGSTON UTILITY	Utility shop	128.52
5310 SEWER OPERATING	430620 FACILITIES	147 LIVINGSTON UTILITY	Utility Shop	128.52
5310 SEWER OPERATING	430620 FACILITIES	3184 MASTERCARD	Dust Destroyers	31.13
5310 SEWER OPERATING	430620 FACILITIES	3184 MASTERCARD	Pizza - Floodcrew	33.18
5310 SEWER OPERATING	430620 FACILITIES	3184 MASTERCARD	Beverages	3.10
5310 SEWER OPERATING	430620 FACILITIES	3184 MASTERCARD	Creamer	1.89

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Fund	Department Name (Account)	Vendor #/Name	Description	Amount
5310 SEWER OPERATING	430620 FACILITIES	3184 MASTERCARD	Paper Towels	15.99
5310 SEWER OPERATING	430620 FACILITIES	3184 MASTERCARD	Hot Cups	37.26
5310 SEWER OPERATING	430620 FACILITIES	98 GRAYBEAL'S ALL SERVICE	Boiler maintenance	34.00
5310 SEWER OPERATING	430620 FACILITIES	2268 BIG BEAR CONTRACTING, LLC	Public works remodel	1,023.90
5310 SEWER OPERATING	430625 SEWER SERVICES	2671 COMDATA	Fuel	154.77
5310 SEWER OPERATING	430625 SEWER SERVICES	3387 J & H, Inc.	Canon copier - maint	16.57
5310 SEWER OPERATING	430625 SEWER SERVICES	1390 KEN'S EQUIPMENT REPAIR,	Sewer Vac	130.50
5310 SEWER OPERATING	430625 SEWER SERVICES	3472 UTILITIES UNDERGROUND	Utility locate notif	29.04
5310 SEWER OPERATING	430630 COLLECTION AND	3016 MT WATERWORKS	Supplies	1,954.79
5310 SEWER OPERATING	430640 SEWER TREATMENT PLANT	147 LIVINGSTON UTILITY	Sewer Plant	398.65
5310 SEWER OPERATING	430640 SEWER TREATMENT PLANT	147 LIVINGSTON UTILITY	Sewer Plant	505.63
5310 SEWER OPERATING	430640 SEWER TREATMENT PLANT	2346 MONTANA DEPT OF	Acreage Annual Invoi	750.00
5310 SEWER OPERATING	430640 SEWER TREATMENT PLANT	2346 MONTANA DEPT OF	WWTP Oufall charge	2,250.00
5310 SEWER OPERATING	430640 SEWER TREATMENT PLANT	3582 RUSSELL INDUSTRIES, INC.	Moyno Pump rebuild p	3,859.22
5310 SEWER OPERATING	430640 SEWER TREATMENT PLANT	424 ENERGY LABORATORIES, INC.	Nutrient test	127.00
5310 SEWER OPERATING	430640 SEWER TREATMENT PLANT	3293 BLACKFOOT COMMUNICATIONS	Internet	50.00
5310 SEWER OPERATING	430640 SEWER TREATMENT PLANT	162 CENTURYLINK	Sewer Plant	176.85
5310 SEWER OPERATING	430670 CUSTOMER ACCTG/COLLECTION	1196 MAILFINANCE	Lease Postage Machin	165.38
5310 SEWER OPERATING	430670 CUSTOMER ACCTG/COLLECTION	2958 NEOFUNDS BY NEOPOST USA,	Postage	149.84
5310 SEWER OPERATING	430670 CUSTOMER ACCTG/COLLECTION	3633 BILLING DOCUMENT	Online Monthly Maint	23.33
5310 SEWER OPERATING	490500 DEBT SERVICE PAYMENTS	2613 US BANK	Sewer Intericap Loan-	42,525.00
5310 SEWER OPERATING	490500 DEBT SERVICE PAYMENTS	2613 US BANK	Sewer Intericap Loan-	122.33
Total for Fund:				54,906.80
5410 SOLID WASTE	343041 GARBAGE COLLECTION CHARGE	999999 POTTER, KATHRYN	Over payment on acct	0.42
5410 SOLID WASTE	430820 FACILITIES	147 LIVINGSTON UTILITY	Scale House	37.39
5410 SOLID WASTE	430820 FACILITIES	147 LIVINGSTON UTILITY	Utility shop	60.29
5410 SOLID WASTE	430820 FACILITIES	147 LIVINGSTON UTILITY	Scale House	32.69
5410 SOLID WASTE	430820 FACILITIES	147 LIVINGSTON UTILITY	Utility Shop	97.09
5410 SOLID WASTE	430820 FACILITIES	3184 MASTERCARD	Pizza - Floodcrew	33.18
5410 SOLID WASTE	430820 FACILITIES	3184 MASTERCARD	Beverages	3.10
5410 SOLID WASTE	430820 FACILITIES	3184 MASTERCARD	Creamer	1.90
5410 SOLID WASTE	430820 FACILITIES	3184 MASTERCARD	Paper Towels	16.00
5410 SOLID WASTE	430820 FACILITIES	3184 MASTERCARD	Hot Cups	37.26
5410 SOLID WASTE	430820 FACILITIES	3298 EXEC U CARE SERVICES,	Cleaning in Feb	80.00
5410 SOLID WASTE	430830 COLLECTION/MAINTENANCE	147 LIVINGSTON UTILITY	Street Shop	50.78
5410 SOLID WASTE	430830 COLLECTION/MAINTENANCE	147 LIVINGSTON UTILITY	Street Shop	47.10
5410 SOLID WASTE	430830 COLLECTION/MAINTENANCE	3184 MASTERCARD	Iphone Accessories	134.96
5410 SOLID WASTE	430830 COLLECTION/MAINTENANCE	3184 MASTERCARD	Lunches	24.08
5410 SOLID WASTE	430830 COLLECTION/MAINTENANCE	22 ALL SERVICE TIRE &	Switch Tire	75.00
5410 SOLID WASTE	430830 COLLECTION/MAINTENANCE	2671 COMDATA	Fuel	252.37
5410 SOLID WASTE	430830 COLLECTION/MAINTENANCE	3387 J & H, Inc.	Canon copier - maint	16.57
5410 SOLID WASTE	430830 COLLECTION/MAINTENANCE	1390 KEN'S EQUIPMENT REPAIR,	Albertson Garbage tr	622.50
5410 SOLID WASTE	430830 COLLECTION/MAINTENANCE	1390 KEN'S EQUIPMENT REPAIR,	Volvo garbage truck	475.00
5410 SOLID WASTE	430830 COLLECTION/MAINTENANCE	1390 KEN'S EQUIPMENT REPAIR,	Volvo garbage truck	225.00
5410 SOLID WASTE	430830 COLLECTION/MAINTENANCE	1390 KEN'S EQUIPMENT REPAIR,	Volvo garbage truck	195.00
5410 SOLID WASTE	430830 COLLECTION/MAINTENANCE	1390 KEN'S EQUIPMENT REPAIR,	Volvo garbage truck	2,866.70
5410 SOLID WASTE	430830 COLLECTION/MAINTENANCE	1390 KEN'S EQUIPMENT REPAIR,	2015 garbage truck	525.00
5410 SOLID WASTE	430830 COLLECTION/MAINTENANCE	1920 HORIZON AUTO PARTS	Gas cap	9.49
5410 SOLID WASTE	430835 CAPITAL OUTLAY	146 LIVINGSTON ENTERPRISE	Solid Waste Program	24.00
5410 SOLID WASTE	430835 CAPITAL OUTLAY	146 LIVINGSTON ENTERPRISE	Solid Waste study sp	30.00

For doc #s from 31051 to 31457, Operating Cash

Fund	Department Name (Account)	Vendor #/Name	Description	Amount
5410 SOLID WASTE	430840 DISPOSAL	2919 FOUR CORNERS RECYCLING,	Commodity Credit- Fe	-2,130.40
5410 SOLID WASTE	430840 DISPOSAL	2919 FOUR CORNERS RECYCLING,	Occ Bins	91.00
5410 SOLID WASTE	430840 DISPOSAL	2919 FOUR CORNERS RECYCLING,	Box Rent	200.00
5410 SOLID WASTE	430840 DISPOSAL	2919 FOUR CORNERS RECYCLING,	Pulls	2,310.00
5410 SOLID WASTE	430840 DISPOSAL	2731 MONTANA WASTE SYSTEMS,	Transfer fees	47,781.56
5410 SOLID WASTE	430870 CUSTOMER ACCTG/COLLECTION	1196 MAILFINANCE	Lease Postage Machin	165.38
5410 SOLID WASTE	430870 CUSTOMER ACCTG/COLLECTION	2958 NEOFUNDS BY NEOPOST USA,	Postage	149.83
5410 SOLID WASTE	430870 CUSTOMER ACCTG/COLLECTION	2595 TOWN & COUNTRY FOODS -	Scale house supplies	39.68
5410 SOLID WASTE	430870 CUSTOMER ACCTG/COLLECTION	3293 BLACKFOOT COMMUNICATIONS	Internet	49.99
5410 SOLID WASTE	430870 CUSTOMER ACCTG/COLLECTION	3633 BILLING DOCUMENT	Online Monthly Maint	23.34
5410 SOLID WASTE	430870 CUSTOMER ACCTG/COLLECTION	162 CENTURYLINK	Scale house	92.00
Total for Fund:				54,745.25
5510 AMBULANCE SERVICES	420730 AMBULANCE OPERATING ACCT	2662 BOUND TREE MEDICAL, LLC	Patient supplies	171.03
5510 AMBULANCE SERVICES	420730 AMBULANCE OPERATING ACCT	55 LIVINGSTON HEALTH	Patient supplies	70.99
5510 AMBULANCE SERVICES	420730 AMBULANCE OPERATING ACCT	14 SHOPKO STORES, LLC	Station supplies	36.48
5510 AMBULANCE SERVICES	420730 AMBULANCE OPERATING ACCT	272 PARK COUNTY	Amb50%	48.69
5510 AMBULANCE SERVICES	420730 AMBULANCE OPERATING ACCT	999999 STOWELL, LARRY	Reimburse for EMS Ce	50.00
5510 AMBULANCE SERVICES	420730 AMBULANCE OPERATING ACCT	879 VERIZON WIRELESS	Medic 2	33.41
5510 AMBULANCE SERVICES	420730 AMBULANCE OPERATING ACCT	879 VERIZON WIRELESS	Medic 1	48.41
5510 AMBULANCE SERVICES	420730 AMBULANCE OPERATING ACCT	879 VERIZON WIRELESS	EMS Director	98.30
5510 AMBULANCE SERVICES	420730 AMBULANCE OPERATING ACCT	879 VERIZON WIRELESS	Medic 4	13.19
5510 AMBULANCE SERVICES	420730 AMBULANCE OPERATING ACCT	879 VERIZON WIRELESS	Medic 3	13.19
5510 AMBULANCE SERVICES	420730 AMBULANCE OPERATING ACCT	26 LIVINGSTON ACE HARDWARE -	Station supplies	10.98
5510 AMBULANCE SERVICES	420730 AMBULANCE OPERATING ACCT	26 LIVINGSTON ACE HARDWARE -	Station supplies	46.97
5510 AMBULANCE SERVICES	420730 AMBULANCE OPERATING ACCT	26 LIVINGSTON ACE HARDWARE -	Station supplies	25.56
5510 AMBULANCE SERVICES	420730 AMBULANCE OPERATING ACCT	2662 BOUND TREE MEDICAL, LLC	Patient supplies	172.80
5510 AMBULANCE SERVICES	420730 AMBULANCE OPERATING ACCT	2671 COMDATA	February Fuel	788.57
5510 AMBULANCE SERVICES	420730 AMBULANCE OPERATING ACCT	3184 MASTERCARD	MedWrite January	2,412.70
5510 AMBULANCE SERVICES	420730 AMBULANCE OPERATING ACCT	3680 FETTERHOFF, PAIGE	Reimburse Intercepto	16.00
Total for Fund:				4,057.27
7910 PAYROLL FUND	212970 FLEX PLAN BENEFITS PAY	3601 PRITT, CINDY	Flex Account - Close	902.05
7910 PAYROLL FUND	212970 FLEX PLAN BENEFITS PAY	958 HARRINGTON, KEVIN	Flex account	23.64
7910 PAYROLL FUND	212970 FLEX PLAN BENEFITS PAY	3680 FETTERHOFF, PAIGE	Reimburse Flex Dayca	379.70
7910 PAYROLL FUND	212970 FLEX PLAN BENEFITS PAY	958 HARRINGTON, KEVIN	Flex account	170.93
Total for Fund:				1,476.32
Total:				176,854.70

**Backup material for agenda item:**

**C. CONSENT - Ratify Claim**

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CITY OF LIVINGSTON  
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Fund	Department Name (Account)	Vendor #/Name	Description	Amount
2300 COMMUNICATIONS/DISPATCH	420160 DISPATCH/COMMUNICATIONS	2268 BIG BEAR CONTRACTING, LLC	Dispatch Remodel	15,000.00
			Total for Fund:	15,000.00
			Total:	15,000.00



**Backup material for agenda item:**

- A. RESOLUTION NO. 4719 - 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, 2017 TO MARCH 31, 2018.

**RESOLUTION NO. 4719**

**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, 2017, TO MARCH 31, 2018.**

**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, 2017.

\_\_\_\_\_  
**JAMES BENNETT - Chairman**

**ATTEST:**

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
**COURTNEY LAWELLIN**  
City Attorney

**STATE OF MONTANA AGREEMENT**  
**MT-17-022**

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 \$785,524 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 2017 (October 1, 2016 – September 30, 2017). 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 P17AS000729, 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 12.82% for state fiscal year 2017 (July 1, 2016 to June 30, 2017). 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, 2017 and shall terminate on March 31, 2018 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 \$5500.00. 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-17-022;
  - 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. The net request for payment (reimbursement); and
  - f. 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 Sub-grantor 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 \$5500.00, the minimum dollar amount of match necessary to be provided by the Subgrantee is \$3666.67 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 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. 110-161) 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 Act 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 the 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 any 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. Lockett  
(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

BY: Denise King/Administrator

Centralized Services Division, Montana Historical Society

City of Livingston

414 East Callender Street

Livingston, MT 59047-2700

DUNS # 137254368

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

(Name/Title)

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

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

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

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



**Backup material for agenda item:**

- B. RESOLUTION NO. 4722 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING DONATION OF A FIRETRUCK TO RW & JW ENTERPRISES FOR DISPLAY AND AS CONSIDERATION FOR IN KIND SERVICES.

**RESOLUTION NO. 4722**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING DONATION OF A FIRETRUCK TO RW&JW ENTERPRISES FOR DISPLAY AND AS CONSIDERATION FOR IN KIND SERVICES.**

**WHEREAS**, the City of Livingston owns a 1977 American LaFrance Fire Truck which has been designated as Engine #2 which is need of almost complete repair and cannot pass the necessary inspections and tests; and

**WHEREAS**, RW&JW Enterprises is interested in obtaining possession of Engine #2 and has, and continues to contribute pump testing at a reduced rate; and

**WHEREAS**, the Fire Chief and City Administration recommend the donation of this fire truck to RW & JW Enterprises and the Certificate of Title for Engine #2 is attached hereto and incorporated by this reference;

**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 execute and transfer the original Certificate of Title for Engine #2 to RW & JW Enterprises for their in kind contribution for services.

**PASSED AND ADOPTED** by the City Commission of the City of Livingston, this \_\_\_\_\_ day of March, 2017.

\_\_\_\_\_  
**JAMES BENNETT – Chairman**  
**APPROVED AS TO FORM:**

**ATTEST:**

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

\_\_\_\_\_  
**COURTNEY ALWELLIN**  
**City Attorney**

**Resolution No. 4722**

**Conveying Engine #2 to RW & JW Enterprises for its contribution of in kind services.**

**Page 1**



# STATE OF MONTANA

33

## DEPARTMENT OF JUSTICE - MOTOR VEHICLE DIVISION

### CERTIFICATE OF TITLE

pj5723

Title Nbr	Year	Make	Model	Extended Model	Style	NCIC Vehicle Type	Unladen Weight/Material
AA2822258	1978	American La Fra	900 Series		FT	TK	
VIN/HIN		MT Boat Nbr	Ton Code/Propulsion Type	Odometer			Vehicle Nbr
8VA3322459			Unknown but over 1 ton				3755630
Brand	Title Issue Date	Vehicle Sale Date	Transfer Reason		Attribute	Owner Tracking Nbr	Fleet Nbr
	11/24/2015	11/10/2015	OOS Title Transfer				

Owner Name and Address  
 City Of Livingston  
 110 S B St  
 Livingston MT 59047-2612  
 Customer Number: 1579383

This vehicle/vessel is subject to the following security interest(s):  
  
  
  
  
  
  
  
  
  
The vehicle/vessel may be subject to other security interests.

Mail To:  
 City Of Livingston  
 110 S B St  
 Livingston MT 59047-2612

As the Registered Owner of the above vehicle, I transfer all right, title and interest to the vehicle to the following person, as of the date below:

Print name of buyer, whether individual or business			Date of Transfer (delivery of vehicle)
Buyer's Street Address		City	State Zip
Federal and state law require that the owner state the mileage of a vehicle upon transfer of ownership. If you fail to complete this disclosure or provide a false statement, you may be subject to fines and/or imprisonment.			
I state that this (check one) <input type="checkbox"/> 5 or <input type="checkbox"/> 6 digit odometer now reads (no tenths) _____ miles, date read _____ and to the best of my knowledge it reflects the actual mileage unless one of the following statements is checked:			
DO NOT CHECK UNLESS APPLICABLE:		<input type="checkbox"/> The odometer reading reflects the amount of mileage in excess of its mechanical limits.	
		<input type="checkbox"/> The odometer reading is not the actual mileage. Warning - odometer discrepancy.	
<b>ALL OWNERS MUST SIGN - Additional owners are listed to the right of the first owner above.</b>			
Under penalty of law, I certify the above odometer disclosure and transfer of ownership information is correct to the best of my knowledge; that I am the same person named above; and if signing for a business entity or trust, I have full authority to act upon behalf of the owner, whose name appears on the upper left side of this Title.			
SELLER COMPLETES IN INK	ALL OWNERS SIGN.	Signature of First Owner or Agent of Owner (Transferor)	Printed name - must be the same as signature (do not type)
	MUST SIGN.	Signature of Additional Owner or Agent of Owner (if more than one)	Printed name - must be the same as signature (do not type)
NOTARY	State of	County of	Signed before me on (date)
	by (clearly print name of person signing Title)		
Notary signature			Notary Stamp/Seal
BUYER	ACKNOWLEDGEMENT OF MILEAGE DISCLOSURE: I am aware of the above odometer certification made by the seller.		
	Signature of Buyer - only one signature is required	Printed name - must be the same as signature (do not type)	

Rev. 09/2015



TITLE AND REGISTRATION BUREAU  
 1003 BUCKSKIN DRIVE  
 DEER LODGE MT 59722-2375



CONTROL NO. **14006181**  
 (This is not a title number)

KEEP IN SAFE PLACE-ANY ALTERATION-USE OF CORRECTION FLUID-ERASURE - VOIDS THIS TITLE.

VERIFY PRESENCE OF WATERMARK - HOLD TO LIGHT TO VIEW

**Backup material for agenda item:**

- C. RESOLUTION NO. 4721 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA AUTHORIZING THE CHAIRMAN TO SIGN THE AMENDED PERPETUAL RIGHT-OF-WAY EASEMENT WITH VISTA, LLC FOR THE PURPOSES OF CONSTRUCTION, MAINTENANCE, OPERATION, SERVICE, REPAIR, AND REPLACEMENT OF CITY STREETS, SANITARY SEWERS, AND WATER LINES.

**RESOLUTION NO. 4721**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA AUTHORIZING THE CHAIRMAN TO SIGN THE AMENDED PERPETUAL RIGHT-OF-WAY EASEMENT WITH VISTA, LLC FOR THE PURPOSES OF CONSTRUCTION, MAINTENANCE, OPERATION, SERVICE, REPAIR, AND REPLACEMENT OF CITY STREETS, SANITARY SEWERS, AND WATER LINES.**

**WHEREAS**, Vista, LLC (“Vista”) owns the following real property that is located within the corporate limits of the City of Livingston, Montana, and the property description and the corresponding easements have been amended and updated to reflect the final project development, they are more specifically described in the amended plat as follows:

Lot 41A and Lot 42A of the Amended Plat of Lot 41 and Lot 42 of Amended Subdivision Plat No. 111, (S/D 599) located in the Northeast Quarter (NE ¼) of Section 26, Township 2 South, Range 9 East, Principal Meridian Montana, City of Livingston, Park County, Montana (Amended Plat No. \_\_\_\_\_)

**WHEREAS**, the Property was annexed into the corporate limits of the City of Livingston on March 10, 2015 by way of Resolution No. 4533; and

**WHEREAS**, except in limited circumstances that do not apply to the Property, Montana Code Annotated § 7-2-4205 requires a municipality to provide services to lands when the municipality has annexed the lands; and

**WHEREAS**, the Property is going to be used for future development and will require city streets as well as city water and sewer service; and

**WHEREAS**, because the Property is in need of city streets and water and sewer service, Vista has been required to grant the City easements over, under and through the Property so the City can properly construct, maintain, operate, service, repair, and replace the improvements, and those easements have been amended; and

**WHEREAS**, the City of Livingston’s administration, Vista, and the engineers for both parties have agreed upon the terms and conditions of the amended easements, all of which are contained in the Perpetual Right-of-Way Easement Agreement (the “Agreement”) attached hereto and incorporated herein as Exhibit A; and

**WHEREAS**, the Chairman is ready and willing to enter into the Agreement upon receiving authorization from the Livingston City Commission.

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

The Chairman is hereby authorized to enter into the Agreement with Vista, a copy of 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 June, 2016.

---

**JAMES BENNETT - Chairman**

**ATTEST:**

**APPROVED AS TO FORM:**

---

**LISA HARRELD**  
Recording Secretary

---

**COURTNEY LAWELLIN**  
City Attorney

Return to:  
 City Clerk  
 City of Livingston  
 414 E. Callender St.  
 Livingston, MT 59047

## PERPETUAL RIGHT-OF-WAY EASEMENT

**FOR A VALUABLE CONSIDERATION**, receipt of which is hereby acknowledged, on this \_\_\_\_ day of \_\_\_\_\_, 2017, the undersigned, **VISTA, LLC**, a Montana limited liability company of 1276 N. 15<sup>th</sup> Avenue, Suite 103, Bozeman, Montana, 59715 hereinafter called "Grantor," hereby grants and conveys unto the **CITY OF LIVINGSTON**, a municipal corporation and political subdivision of the State of Montana, of 414 E. Callender Street, Livingston, Montana, 59047 hereinafter called "Grantee," a perpetual non-exclusive easement and right-of-way over, across, under, and through the following described tract of real property in Park County, Montana:

Lot 41B and Lot 42B of the Amended Plat of Lot 41 and Lot 42 of Amended Subdivision Plat No. 111 (S/D 599), located in the northeast one-quarter of Section 26, Township 2 South, Range 9 East, Principal Meridian Montana, City of Livingston, Park County, Montana (Amended Plat No. \_\_\_\_\_).

The perpetual easement(s) to Grantee is for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing, and replacing city streets, sanitary sewers and water lines over, across, under, and through the said real property as depicted on Exhibit A attached hereto and incorporated herein by this reference; together with the right of free ingress and egress at all times for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing, and replacing said sanitary sewers and appurtenances; and adding additional sanitary sewer lines.

Grantor shall continue to have the right to use and enjoy the above-described property, except as to the rights herein granted, subject to the following restrictions:

1. Grantor and their successors and/or assigns agree not to construct, nor cause to be constructed within the easement right-of-way, any type of building or structure such as, but not limited to, houses, garages, sheds, kennels, fences, or any other fixed objects of any kind, shape or form without Grantee's express consent. Notwithstanding the foregoing, Grantor is expressly permitted to: a) pave and use the easement right of way for any pedestrian and vehicular ingress and egress such as drive aisles, drive ways, sidewalk, cross walk, and parking areas; and, b) to install landscaping and landscaping facilities within the easement right-of-way, such as irrigation, berms, bushes, shrubs, hedges, grass, or any other facilities or plantings of a similar nature that will be operated and maintained by Grantor. Trees and other deep-rooted shrubs such as lilac shall not be planted within the easement right-of- way.

2. Grantor agrees that authorized representatives of the City of Livingston may freely travel within the easement right-of-way with their equipment in the performance of their duties.
3. Grantor agrees to obtain the permission of the Public Works Department or Grantee prior to placing or removing any fill dirt within the easement right-of-way and, in addition, in the event such permission is granted, the Grantor agrees to perform any work necessary to modify the existing sanitary sewers and appurtenances, which work may be required prior to placing or removing any fill dirt within the easement right-of-way; and all such work shall be done at the Grantor's expense and without expense to the City.
4. The Restrictions, Covenants, and Hold Harmless Agreements herein contained shall attach to and run with the land and shall bind the parties hereto and all persons claiming thereunder.
5. The purpose of this document is to modify & clarify the easements shown on the Amended Plat of Lots 41 & 42 of Subdivision Plat #111 (S/S 599), and document # \_\_\_\_\_.

### **MISCELLANEOUS PROVISIONS**

1. **Run with the Land; Binding Effect.** The easements shall be perpetual and shall run with the land for the benefit of Grantee and Grantee's successors and assigns and shall be binding upon the heirs, successors and assigns of the respective parties hereto.
2. **Indemnification.** Grantee shall defend, indemnify and hold harmless Grantor, its shareholders, officers, directors, agents, members and employees, and their respective heirs, personal and legal representatives, guardians, successors and assigns, from and against any and all claims, threats, liabilities, taxes, interest, fines, penalties, suits, actions, proceedings, demands, damages, losses, costs and expenses (including attorneys' and experts' fees and court costs) of every kind and nature arising out of, resulting from, or in connection with the easements granted herein.
3. **Entire Agreement; Merger of Previous Understanding.** This Agreement embodies and constitutes the entire understanding between the parties hereto with respect to the grant of easements herein, and all prior or contemporaneous negotiations, communications, conversations, understandings and agreements had between the parties hereto, oral or written, are merged in this Agreement.
4. **Signing Authority & Entity Approval.** If signing on behalf of a corporation or other entity, the undersigned persons represent that they do so under the authority duly granted them by the Members or Board of Directors of their respective entity and that the terms of this Agreement have been approved by the governing bodies of such respective entities.
5. **Modification.** This Agreement may not be amended, modified or changed except by a written instrument signed by Grantor and Grantee, or their heirs, successors or assigns.

**6. Construction.** The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto. Headings at the beginning of sections and subsections of this Agreement are solely for the convenience of the parties and are not a part of this Agreement. When required by the context, the words "Grantor" and "Grantee" shall include the respective heirs, successors and assigns, if any, of them.

**7. Governing Law and Jurisdiction.** This Agreement shall be governed by and constructed in accordance with the laws of Montana. All lawsuits filed to interpret or enforce the terms and conditions of this Agreement must be filed in the 6<sup>th</sup> Judicial District, Park County, Montana.

**8. Recordation.** The parties agree that upon mutual execution, this Agreement shall be recorded in the office of the Clerk and Recorder of Park County, Montana.

**9. Severance.** Should any portion of this Agreement be declared invalid and unenforceable then such portion shall be deemed to be severed from this Agreement and shall not affect the remainder of this Agreement.

**10. Attorney Fees.** In the event it becomes necessary for a party to enforce any of the provisions of this Agreement through legal action, it is understood and agreed that the prevailing party shall recover said party's reasonable attorney's fee, together with all costs and expenses pertaining thereto.

**IN WITNESS WHEREOF,** the Grantor and Grantee have executed this Grant of Perpetual Right of Way Easement on the date written above.

<b>GRANTOR</b>	<p><b>VISTA, LLC,</b>  <b>a Montana limited liability company,</b> owner of                  Tracts 41B &amp; 42B of Amended Plat No. _____</p> <p>By: _____</p> <p>Its: _____</p>
----------------	--

STATE OF MONTANA    )  
   : ss  
 County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person who signed the foregoing instrument as the \_\_\_\_\_ of VISTA, LLC, a Montana limited liability company, and who acknowledged to me that they executed the same.

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

\_\_\_\_\_

Notary Public in and for the State of Montana  
Printed name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**GRANTEE**                      **CITY OF LIVINGSTON**

By: \_\_\_\_\_  
Chair, City Commission

Attest: \_\_\_\_\_  
City Attorney

STATE OF MONTANA        )  
  : ss  
County of Park                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_ and \_\_\_\_\_, known to me to be the Chair of the City Commission and City Attorney, respectively, of the City of Livingston, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Livingston, Montana. Witness my hand and seal the day and year herein above written.

\_\_\_\_\_  
Notary Public in and for the State of Montana  
Printed name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_



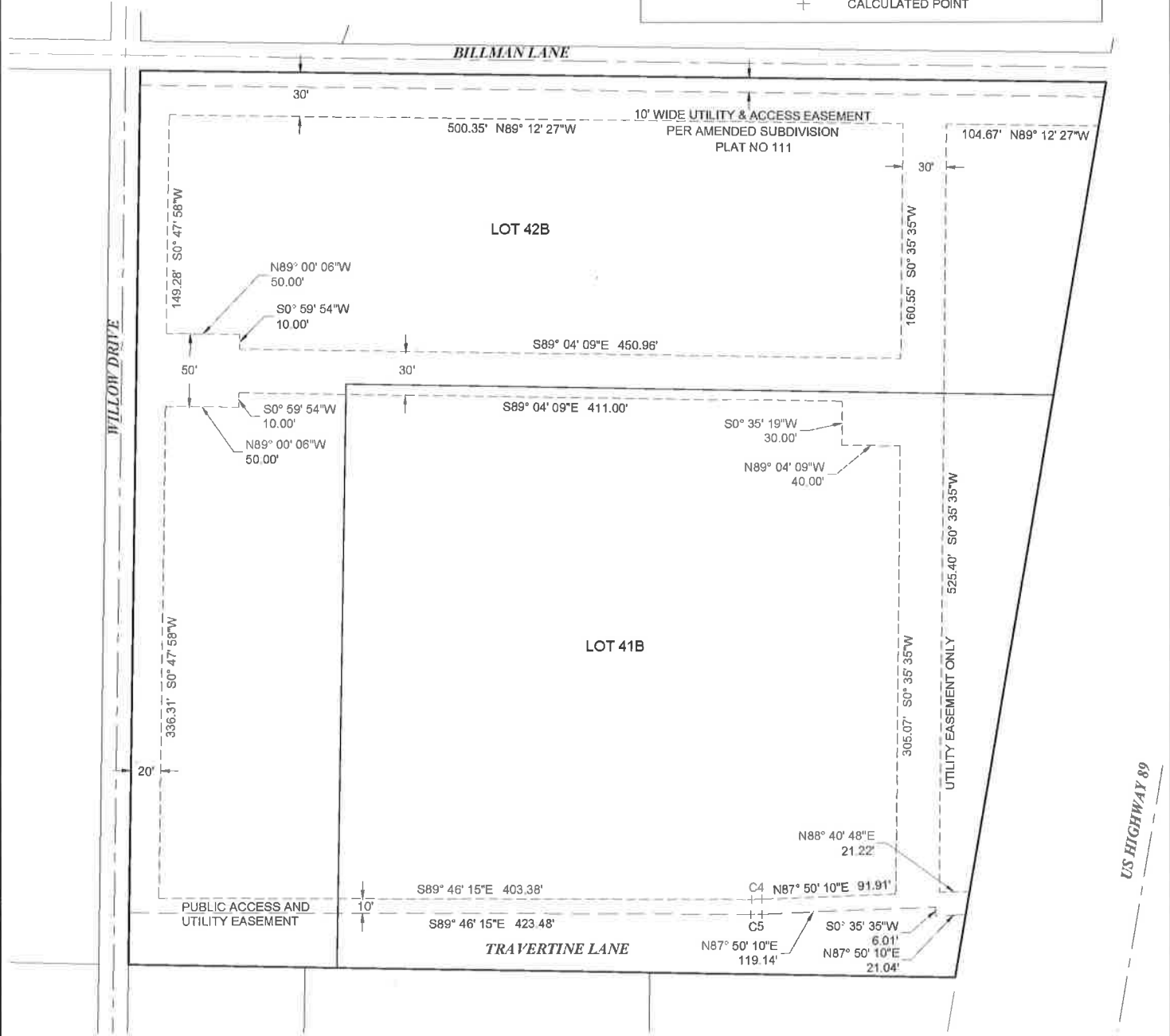
# EASEMENT EXHIBIT "A"

## LOT 41B AND LOT 42B OF AMENDED SUBDIVISION PLAT



CURVE TABLE					
CURVE #	DELTA	RADIUS	LENGTH	C. B.	C. D.
C5	2°23'35"	180.00	7.52	N89°01'58"E	7.52
C4	2°23'35"	170.00	7.10	N89°01'58"E	7.10

LEGEND	
	PROPERTY BOUNDARY
	CITY OF LIVINGSTON UTILITY EASEMENT
	EASEMENT AS DESCRIBED
	ADJOINING PROPERTY LINE
	ROAD CENTERLINE
	CALCULATED POINT



M:\152354\Drawings\Amended Plat\AMENDED PLAT.dwg

**HYALITE**  
 2304 NORTH 7TH AVENUE STE L BOZEMAN, MT 59718  
 PHONE: (406) 587-2781 FAX: (406) 522-8228  
 WEB: [www.hyaliteeng.com](http://www.hyaliteeng.com)

### LOT 41B AND LOT 42B OF AMENDED SUBDIVISION PLAT



DATE: 3/1/2017  
 SCALE: AS NOTED  
 JOB NUMBER: 152354  
 SHEET: 1 OF 1



**From:** Brett Megaard <bmegaard@hyaliteeng.com>  
**Sent:** Thursday, March 02, 2017 2:46 PM  
**To:** Jim Woodhull  
**Cc:** Shannon Marinko; KEVIN COOK  
**Subject:** Livingston Murdoch's- Boundary Realignment & Updated Easement Doc  
**Attachments:** Utility and Access Easement Livingston Commercial.docx; AMENDED PLAT-AMENDED PLAT.pdf; AMENDED PLAT-EASEMENT EXHIBIT.pdf

Jim,

Attached is the proposed boundary realignment/amended plat, as well as the updated easement document and corresponding easement exhibit.

I did update the easement document due to the year and lot numbering being updated, as well as adding item #5.

Take a look at all the attachments and let me know if you have any questions. If the City attorney has any questions as well, feel free to give me a call. Also let me know if there is anything else that I need to do for this.

Thanks for your help on this!

Thanks,

Brett Megaard, P.E.  
Project Engineer  
**HYALITE**  
2304 N. 7th Ave, Suite L  
Bozeman, MT 59715  
406-581-5699 (Cell)  
406-587-2781 (Office)

**Backup material for agenda item:**

- D. RESOLUTION NO. 4720 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING THE CITY MANAGER TO AMEND THE CITY'S PROFESSIONAL SERVICES AGREEMENT WITH ADVANCED ENGINEERING AND ENVIRONMENTAL SERVICES, INC. (AE2S) FOR WATER WATER TREATMENT PLANT UPGRADE (WWTP) DESIGN, AND TO ENTER INTO AN AGREEMENT FOR CONSTRUCTION ADMINISTRATION SERVICES ON THE WATER RECLAMATION FACILITY PROJECT.

**RESOLUTION NO. 4720**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING THE CITY MANAGER TO AMMEND THE CITY'S PROFESSIONAL SERVICES AGREEMENT WITH ADVANCED ENGINEERING AND ENVIRONMENTAL SERVICES, INC. (AE2S) FOR WASTE WATER TREATMENT PLANT UPGRADE (WWTP) DESIGN, AND TO ENTER INTO AN AGREEMENT FOR CONSTRUCTION ADMINISTRATION SERVICES ON THE WATER RECLAMATION FACILITY PROJECT.**

---

**WHEREAS**, following a request for qualifications and a subsequent rating process of prospective engineering proposals, the City of Livingston's Administration selected Advanced Engineering and Environmental Design Services, Inc., a North Dakota limited liability company with an office in Bozeman, Montana, to provide engineering design services for the Waste Water Treatment Plant upgrade; and

**WHEREAS**, the design is substantially complete and the project can now proceed to bid and the City desires AE2S to continue as the project managers for the Water Reclamation Facility Upgrade; and

**WHEREAS**, a the City has determined to use USDA financing for the proposed project and USDA requires a specific format for the design contract setting forth the terms and conditions for engineering design services and for providing construction management, which is attached hereto and incorporated herein as Exhibit A;

**WHEREAS**, The City Administration and the Public Works Director are requesting the City Commission authorize the City Manager to enter into an amended Owner Engineer Agreement; and

**WHEREAS**, the City Manager and Advanced Engineering and Environmental Design Services, Inc. are ready and willing to execute the amended Professional Services Agreement upon the Livingston City Commission's approval.

**Resolution No. 4720**

**A resolution authorizing the City Manager to sign a Professional Services Agreement with Advanced Engineering and Environmental Design Services, Inc. for the Water Reclamation Facility upgrade project administration.**

**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 amended Agreement with Advanced Engineering and Environmental Design Services, Inc. for upgraded design and construction administration services on the Water Reclamation Facility Upgrade, which Agreement is attached hereto and incorporated herein as Exhibit A.

**PASSED AND ADOPTED** by the City Commission of the City of Livingston, this \_\_\_\_\_ day of March, 2017.

\_\_\_\_\_  
**JAMES BENNETT - Chairman**

**ATTEST:**

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
**COURTNEY LAWELLIN**  
**City Attorney**

**Resolution No. 4720**

**A resolution authorizing the City Manager to sign a Professional Services Agreement with Advanced Engineering and Environmental Design Services, Inc. for the Water Reclamation Facility upgrade project administration.**

**Page 2**

This is **Amendment No. 1** to the **Professional Services Agreement** between Owner and Engineer dated **February 16, 2016**.

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**  
**Amendment No. 1**

The Effective Date of this Amendment is: \_\_\_\_\_.

*Background Data*

*Effective Date of Owner-Engineer Agreement: **February 16, 2016***

*Owner: City of Livingston, Montana  
414 East Callender Street  
Livingston, Montana 59047*

*Engineer: Advanced Engineering and Environmental Services, Inc.  
4050 Garden View Drive, Suite 200  
Grand Forks, North Dakota 58201-721*

*Project: Waste Water Treatment Plant Upgrade Design  
More commonly referred to as:  
Livingston Water Reclamation Facility (WRF) Upgrade*

*Engineer's  
Project Number: **P05613-2015-001***

*Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]*

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

*Description of Modifications:*

- **See attached Agreement Amendment No. 1 between Owner and Engineer for Professional Services.**

Amendment No. 1 to Owner-Engineer Agreement.

EJCDC® E-500, Agreement **Amendment No. 1** Between Owner and Engineer for Professional Services.  
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and American Society of Civil Engineers. All rights reserved.

*Agreement Summary:*

<i>Original agreement amount:</i>	<u><b>\$1,239,231.00</b></u>
<i>Net change for prior amendments:</i>	<u><b>\$0.00</b></u>
<i>This amendment amount (I&amp;C TBD):</i>	<u><b>\$1,124,449.00</b></u> (TENTATIVE, FINAL NEGOTIATION TBD)
<i>Adjusted Agreement amount:</i>	<u><b>\$2,363,680.00</b></u>

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

- *Submittal of final plans and specifications suitable for solicitation of competitive construction bid proposals on or before April 15, 2017, contingent upon funding Agency review and approval.*

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

***Total Agreement: This Amendment No. 1 becomes the Total Agreement (per Paragraph 8.02 – Total Agreement) for Professional Services between Owner and Engineer.***

DRAFT



This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

**AGREEMENT AMENDMENT NO. 1  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

**Livingston Water Reclamation Facility Upgrade  
Engineer's Project No. P05613-2015-001**

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723  
[www.asce.org](http://www.asce.org)

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**AGREEMENT AMENDMENT NO. 1  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT AMENDMENT NO. 1 (Agreement) is effective \_\_\_\_\_ (“Effective Date”) between

The CITY OF LIVINGSTON, MONTANA , 414 East Callender Street, Livingston, Montana 59047 (“Owner”) and

ADVANCED ENGINEERING AND ENVIRONMENTAL SERVICES, INC., a North Dakota corporation with its principal business office located at 4050 Garden View Drive, Suite 200, Grand Forks, ND 58201-721 (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Water Reclamation Facility Upgrade (Engineer's Project No. P05613-2015-001) (“Project”).

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:

Professional Design, Bidding, Construction, Post-Construction / Warranty, Instrumentation & Controls, and Funding Administration Services (as defined in this agreement) for the *Livingston Water Reclamation Facility Upgrade project.*

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

**1.01** *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

**ARTICLE 2 – OWNER'S RESPONSIBILITIES**

**2.01** *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of Engineer's services;
  2. the presence at the Site of any Constituent of Concern; or
  3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

### ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

#### 3.01 *Commencement*

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

#### 3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

### ARTICLE 4 – INVOICES AND PAYMENTS

#### 4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. **Invoices must include a breakdown of services provided.** Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

#### 4.02 *Payments*

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

### ARTICLE 5 – OPINIONS OF COST

#### 5.01 *Opinions of Probable Construction Cost*

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

#### 5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

### 5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

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

- c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.



## 6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.06. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

## 6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

#### 6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall ~~shall~~ **may** jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

#### 6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least ~~10~~ 30 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

#### 6.06 *Suspension and Termination*

##### A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

##### B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
  - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
  - b. by Engineer:
    - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
    - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
    - 3) Engineer shall have no liability to Owner on account of such termination.
  - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of

receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
  2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

#### 6.07 *Controlling Law*

- A. 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.

#### 6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
  - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  - 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

#### 6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.
- C. **In the event either party incurs legal expenses to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees and other costs and expenses, whether the same are incurred with or without suit.**

#### 6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.

- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

#### 6.12 *Records Retention*

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

#### 6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt. **Any change of address shall be made by giving written notice thereof to the other party, providing the new address.**
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

- F. *Conflict of Interest:* The Engineer covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the Services which would conflict in any manner or degree with the performance of the Services. The Engineer further covenants that, in performing this Agreement, it will employ no person who has any such interest.
- G. *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.
- H. *Interpretations:* 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, feminine or neuter expressions shall be interchangeable.
- I. *Non-Discrimination:* Pursuant to MCA § 49-3-207, in the performance of this Agreement the Engineer agrees that all hiring will be on the basis of merit and qualifications and that the Engineer 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.
- J. *Approval:* The executed Owner-Engineer Agreement (this Agreement) must be approved by Rural Development prior to Agency Concurrence in any payment of RUS funding for engineering services. See Exhibit L – “RUS Certification Page” for Agency approval.

## ARTICLE 7 – DEFINITIONS

### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
  1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
  2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
  3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
  4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
  5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.



6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities

relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer ~~as an Additional Service~~ and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and

auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
  37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
  38. *Agency* – **The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.**
  39. **Party (plural: Parties) – Collective reference to either (or both) Owner and Engineer. The terms “Party” and “party” and “Parties” and “parties,” are used interchangeably, and shall have the same meaning under the terms of this Agreement.**
- B. Day:**
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

### 8.01 Exhibits Included:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution. **(NOT USED)**.
- I. Exhibit I, Limitations of Liability **(NOT USED)**.
- J. Exhibit J, Special Provisions (Project Description).

K. Exhibit K, Amendment to Owner-Engineer Agreement.

L. Exhibit L, RUS Certification Page.

#### 8.02 *Total Agreement*

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

#### 8.03 *Designated Representatives*

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

#### 8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.
- B. The Engineer states that it is engaged in an established business or profession which is in no way affiliated with or connected to the City (Owner), 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 Engineer shall perform the Services as an independent contractor. The Parties agree that the City (Owner) is only interested in the end result of the Services, not in the method of performance, and as such, the Engineer has been and will continue to be free from the control or direction of the City (Owner) in the performance of this Agreement.
- C. Engineer shall not be considered an employee of the City (Owner) for purposes of tax, retirement system, or social security, FICA withholding, or for any other purpose. Engineers are not subject to the terms and provisions of the City's personnel policies and may not be considered a City employee for worker's compensation or any other purpose.

- D. The Engineer 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 (Owner) besides that of an independent contractor.
- E. The Engineer, its officers, agents, and/or employees shall not have the authority to make representations on behalf of the City (Owner), and neither shall the aforementioned persons have the authority to legally bind or otherwise obligate the City to any third person or entity.
- F. Engineer shall furnish all labor, materials supplies, and incidentals necessary to conduct and complete the Services.
- G. The Engineer represents and warrants as follows:
  - 1. Engineer and Engineer's employees are licensed by the State of Montana as engineers and agree to perform the Services in a professional manner according to the standards of care, skill, knowledge and diligence normally exercised by a professional engineer and in accordance with sound practices. In the event any service is found to be out of conformance with the foregoing standards, the Engineer, at its own expense, shall make such changes, modifications or additions as are necessary to remedy the situation.
  - 2. Engineer and Engineers 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.
  - 3. Engineer will comply with all applicable laws, rules, ordinances and regulations adopted or promulgated by any governmental agency or regulatory body, whether State, Federal, or Local (in accordance with Paragraph 6.01.E.3), 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 Engineer in performance of this Agreement.
  - 4. Engineer has reviewed the contract documents related to the Services of this Agreement 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 of its officers, employees or agents.

#### 8.05 *Federal Requirements*

- A. *Agency Concurrence* – Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.

- B. *Audit and Access to Records.* – Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.
- C. *Restrictions on Lobbying* – Engineer and each Consultant shall comply with “Restrictions on Lobbying” if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attemptin to influence an officer or employee of any agency, member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certifications and disclosure forms shall be provided by Owner.
- D. *Suspension and Debarment* – Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation I this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by Owner. The Engineer will complete and submit a form AD-1048, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions,” to the Owner who will forward it to the USDA, Rural Development processing office.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement AMENDMENT NO. 1, the Effective Date of which is indicated on page 1.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

Owner:  
CITY OF LIVINGSTON, MONTANA

Engineer:  
ADVANCED ENGINEERING AND ENVIRONMENTAL SERVICES, INC.

By:

By:

Print name:

Print name: Brett Jochim

Title:

Title: COO

Date Signed:

Date Signed:

Engineer License or Firm's Certificate No. (if required):

[ ]

State of: [ ]

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

City of Livingston  
330 N Bennet Street  
Livingston, MT 59047

AE2S  
1050 East Main St STE 2  
Bozeman, MT 59715

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

Shannon Holmes  
Title: Public Works Director  
Phone Number: 406-222-5667  
E-Mail Address: [pwd@livingstonmontana.org](mailto:pwd@livingstonmontana.org)

Scott Buecker, PE  
Title: Project Manager  
Phone Number: 406-219-2633  
E-Mail Address: [scott.buecker@ae2s.com](mailto:scott.buecker@ae2s.com)

**AND/OR**

**AND/OR**

Matt Whitman  
Title: Project Manager  
Phone Number: 406-222-5667  
E-Mail Address: [mwhitman@livingstonmontana.or](mailto:mwhitman@livingstonmontana.or)

Brian Viall  
Title: Project Engineer  
Phone Number: 406-219-2633  
E-Mail Address: [brian.viall@ae2s.com](mailto:brian.viall@ae2s.com)



This is **EXHIBIT A**, consisting of **20** pages, referred to in and part of the **Agreement Amendment No. 1 between Owner and Engineer for Professional Services** dated \_\_\_\_\_.

## **Engineer's Services**

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Article 1 of the Agreement is supplemented to include the following agreement of the parties.

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

### **PART 1 – BASIC SERVICES**

#### **A1.01 Phase 010 – Project Development**

- A. **See Project Description in Exhibit J for project specific Subtasks and Deliverables of Phase 010**

#### **A1.02 Phase 020 – Study and Report**

- A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
  - a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions: **Design Population Equivalent = 11,500; Secondary Treatment to be Continuous Influent Sequencing Batch Reactor Technology; Convert Anaerobic Digestion to Aerobic Digestion.**
  - b. In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. the number of alternative solutions should be appropriate to the specific project as concurred in by the Agency.
  - ~~c. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify [ ] [insert specific number] alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.~~
2. Identify potential solution(s) to meet Owner's Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.
4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.

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#### **Exhibit A – Engineer's Services**

EJCDC® E-500, Agreement **Amendment No. 1** Between Owner and Engineer for Professional Services.  
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 and American Society of Civil Engineers. All rights reserved.

5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.
6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.
8. **Utilize Prepare a report (the "Report") Provided by Owner and prepared under a separate Engineering Services Agreement** which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs. **The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This Document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency.**
9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
10. When mutually agreed **and approved by the Agency**, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."
11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.

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Exhibit A – Engineer's Services

14. Perform or provide the following other Study and Report Phase tasks or deliverables:
    - a. **Provide an Environmental Report as defined at 7 CFR 1794 and RUS Bulletin 1794A-602 or other Agency approved format. The Environmental Report must be concurred in by the Agency.**
  15. Furnish **one (1)** review copies of the Report and any other Study and Report Phase deliverables to Owner within **thirty (30)** days of the Effective Date and review it with Owner. Within **thirty (30)** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
  16. **Revise the Report and any other Study and Report Phase Deliverables in response to Owner's and Agency's comments, as appropriate, and furnish three (3) written copies and one (1) electronic copy of the revised Report and any other Study and Report Phase Deliverables to the Owner within thirty (30) days of receipt of Owner's and Agency's comments.**
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

#### A1.03 Phase 030 – Preliminary Design

- A. After acceptance by Owner **and concurrence by Agency** of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner Engineer shall:
1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
  2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner **and Agency** during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
  3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.02.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then

at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.

4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
  5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
  6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
  7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
  8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable. **Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article.**
  9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:
    - a. **See Project Description in Exhibit J for project specific Subtasks and Deliverables.**
  10. Furnish **one (1)** review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within **one-hundred-twenty (120)** days of authorization to proceed with this phase, and review them with Owner. Within 60 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
  11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents,

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Exhibit A – Engineer's Services

This is **EXHIBIT H**, consisting of [ ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [ ]

## Dispute Resolution

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Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

**[NOTE TO USER: Select one of the two alternatives provided.]**

### H6.08 Dispute Resolution

- A. *Mediation:* Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by **[here insert name of mediator, or mediation service]**. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

[or]

- A. *Arbitration:* All Disputes between Owner and Engineer shall be settled by arbitration in accordance with the **[insert the name of a specified arbitration service or organization here]** rules effective at the Effective Date, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Paragraph H6.09.A will be specifically enforceable under prevailing law of any court having jurisdiction.
1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the **[specified arbitration service or organization]**. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.
  2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$[ ] (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$[ ] (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$[ ] (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.

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Exhibit H - Dispute Resolution.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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3. The rules of any arbitration shall be supplemented to include the following: The award rendered by the arbitrators shall be in writing, and shall include (a) a precise breakdown of the award, and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.
4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.
5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Engineer may join such Joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Paragraph H6.09.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.

**Backup material for agenda item:**

- B. DISCUSS/APPROVE/DENY - Front Street Trail Connector Grant return

**Interim City Manager**

*Lisa L. Lowy*

[citymanager@livingstonmontana.org](mailto:citymanager@livingstonmontana.org)

(406) 823-6000 Phone



**Chairman**

*James Bennett*

**Vice Chairman**

*Dorel Hoglund*

**Commissioners**

*Mel Friedman*

*Sarah Sandberg*

*Quentin Schwarz*

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TO: Livingston City Commission  
FROM: Lisa L. Lowy, Interim City Manager  
DATE: March 15, 2017  
RE: Front Street Trail Connection Grant (FWP)

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In late 2014 the City submitted a grant application for the FWP Recreational Trails Grant program, for the Front Street Trail Connection project. This planned trail connection was to build a trail extension along Front Street in the MRL right of way to improve connectivity to the existing trail system on the North side. This grant application proposed a \$66,950 in kind grant match against an award of \$20,000. The Grant was awarded in the amount of \$20,000 with a completion requirement of October, 2017.

As we have completed other projects, worked on budgetary planning and worked through administrative changes in the City, this project was slated for the 2017 construction season which is within the stated time line. As part of that preparation we have sought the Temporary Occupancy Permit from MRL for construction of the trail. On February 24, the City was notified that MRL has denied the request and is requiring further survey, easement and engineering work for this project.

The area proposed for this trail is considered challenging due to factors which include: seasonal snow storage with no feasible alternative, proximity to train traffic, uncertainty about rail underpass construction as well as the high in-kind to award ratio.

With the newest development of MRL requiring further uncompensated work to bring this project to fruition and given the numerous projects related to infrastructure we will be administering as well as the location challenges and the poor return on investment ratio, it is the recommendation of the City Administration that we respectfully decline the grant award.

The City will continue, especially in light of the underpass project, to find alternatives to enhance trail connections in the area through possible sidewalk extensions on the opposing side of the street.





MONTANA RAIL LINK, INC. (800) 241-5676  
Real Estate Department (406) 523-1500  
101 International Drive (406) 523-1462 fax  
Post Office Box 16624 www.montanarail.com  
Missoula, Montana  
USA 59808

February 24, 2017

Matt Whitman  
Project Manager  
Public Works Dept.  
City of Livingston  
330 N. Bennet St.  
Livingston, MT 59047

Dear Matt:

Montana Rail Link, Inc. (MRL) has completed its initial review of the City of Livingston's ("City") application for a Temporary Occupancy Permit (TOP) for use of railroad right of way paralleling Front Street during construction of the Front Street Trail.

At this time MRL is respectfully denying the City's request for a TOP.

If the following information is provided, MRL will re-open the City's application for additional review:

- A plan view drawing of the proposed TOP area showing:
  - All property boundaries; and
  - The easement area of Front Street

Thank you for your interest in railroad property.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Theresa Beckwith', written over a large, stylized blue scribble.

Theresa Beckwith  
Supervisor - Real Estate  
Real Estate Department


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 **Grant Tracking**
**Grant: 25981 - Front Street Trail and Trail Connection Project - 2015**
**Status:** Underway

**Program Area:** FWP RTP Recreational Trails Program

**Grantee Organization:** Livingston, City of

**Program Officer:** Beth Shumate

**Awarded Amount:** \$20,000.00

**Instructions**

All applicants are required to fill out this form. To attach a map, fill out the required information and 'save'. DO NOT 'MARK AS COMPLETE' yet. After you click 'save', you will then have the ability to select the icon next to 'attach map' and upload your file. Once all the information is correct, select 'Mark as Complete' or 'Go to Application Forms'. The fields with the red asterisk are required before you will be able to select save.

**Project Description**
[Return to Components](#)
**Project Description\***

Describe the scope of work and what you intend to accomplish with this project. Clearly define exactly what the requested grant funds will be used for; you can explain project cost details in your project budget form(s). Limit your response to no more than 1,000 words. Additional information should include provisions for disabled access, user abilities served and range of abilities served, provisions for cultural and natural resource interpretation, provisions for safety information and education and unique attributes or features of this project that could serve as examples to other projects. Include maps (area and project specific maps, with a USGS 1:24,000 quad map (or more, if necessary to show entire project area). Identify on project specific map locations of structures, access points, trailheads and trailside facilities.

Due to the considerable amount of public use of City trails, a need for safer recreation alternatives for pedestrians, and an alarming amount of overweight individuals in Montana, the City is proposing to complete several goals with RTP funding.

1. Develop the Front Street Trail along West Front Street in the City owned right-of-way (proof from MT DOT regarding the right-of-way is attached). This gravel trail will begin at North 5<sup>th</sup> Street and end at Sun Avenue and will be approximately .85 miles long and six feet wide. This trail is second on the *Livingston Parks & Trails Steering Committee's* list of immediate recommendations (attached), behind developing a plan for an area behind the city's Civic Center. A sidewalk/ trail is not present along the majority of West Front Street, and pedestrians are forced to walk or bike in the road, alongside vehicular traffic. The proposed Front Street Trail will provide benefits to all trail users by allowing pedestrians to travel safely from the center of town to the following destinations: Washington Elementary School (130 children), Legion Baseball Fields, Northside Park and Soccer Fields (NPSF), Treasure Lanes Bowling Alley, LINKS for Learning afterschool program, Adult Education Courses, Cemetery, Bozeman Trail Connector, Bitterroot Trail, Mars Park, and several newly developed housing subdivisions. The purpose of the proposed action is to connect community members with an area of town that holds the largest amount of recreational opportunities via means of a safe trail.
2. Develop the Northside Trail Connector on City owned property. This trail will traverse along Northern Lights Road, beginning at the Northside Park and Soccer Fields (NPSF) and connecting with the entrance to Mars Park, the Bozeman Trail Connector and the Legion Baseball Fields. It is imperative to connect parks and trails for the ease of use for trail and park users, and this trail will accomplish a connection of two parks and three trails; Bitterroot Trail, Bozeman Trail Connector and Summit Trail. A sidewalk or trail is not present along the entire length of Northern Lights Road. This gravel trail will be .4 miles long and six feet wide.
3. Install kiosks that will house printed trail connection map signs at each end of all of the City's existing trails. Kiosks will be placed at each end of the: Bozeman Trail Connector, Northside Trail Connector, Front Street Trail, Myers' River View Trail, Bitterroot Trail, and the North Hill (Summit) Trail. The trail connection signs will feature detailed maps of the nearest recreational trails from the user's current location. These maps are being developed in partnership with Livingston HealthCare as part of the Livingston Trails Rx (LTR) program.

The LTR program intends to unite natural landscape and healthy living by educating the public on the wellness benefits of recreating on trails. The CDC reports "More than one-third of all adults do not meet recommendations for aerobic physical activity based on the 2008 Physical Activity Guidelines for Americans, and 22% of Montana's adults report no participation in physical activity at all in the preceding month." The program will engage the community through a two prong approach, grassroots marketing and wellness professionals prescribing physical fitness on the trails. Livingston Trails Rx program will educate the community through a series of brochures, trail maps, and displays throughout Livingston. Prescription pads will be offered to doctors, physical and emotional therapists, and wellness professionals as a way to engage their patients in physical fitness. The goals of the LTR program include: 1) Promote the trails system as an affordable, convenient approach to physical fitness; 2) Educate the community of the overall wellness benefits of recreating on the trails system; and, 3) Decrease obesity and other obesity-related conditions such as diabetes, cardio vascular disease, stroke, and certain types of cancer through physical activity.

Provisions for safety measures regarding the proposed trails include adequate safety and regulation signage. The following are a few subject areas the signs will address: hours of use, care to be taken of the area, leash requirements and yield expectations. Small stop signs and non-motorized use signs will be situated at each end of the trails as vehicular traffic occurs at the trailheads. Trailhead connection signs housed in sturdy and stylish kiosks will be placed at trailheads of each City trail to provide cohesion, and education on City trail lengths, connections via streets or roads, funders of the trails, and any other pertinent information. Dog stations and garbage cans will be located towards each trailhead of the Front Street trail. Provisions for disabled access and user abilities served have been addressed in the "Support Special Needs" section of this application.

Residential development in the area of the City where the trails are being proposed has been increasing over the past twelve years. This is the area of the City's major growth, having over 500 new residential lots. The Livingston Youth Soccer Association's (LYSA) and the City desire to address the critical need for public green space on the City's Northside. Phase 1 of the 4-Phased NPSF Project was completed in September 2010, costing \$725,000. Phase 1 built 7 acres of new green space, planted 50 trees, installed picnic tables and benches, developed two soccer fields, a surfaced walking path, and a parking lot. On August 27, 2011, LYSA hosted the Grand Opening of Phase 1- over 2,000 community members visited the park while over 450 LYSA youth soccer players played their first recreational soccer games of the season on the new fields. Phase 2 was completed in 2013, and the association has now completed fundraising for Phase 3 of the project.

The Northside Connector Trail would connect NPSF users to Mars Park, the Legion Baseball Fields, Northern Lights Subdivision and the Bozeman Trail Connector. The Front Street Trail would connect the City center with the rapidly growing subdivisions and the recreational areas present in the Northside of Livingston. Furthermore, Washington Elementary School was reopened in 2013, and it houses six kindergarten and one preschool class. These students lack a continuing sidewalk from their school towards the NPSF, newly developed subdivisions and Mars Park.

**Grant Category: Safety, Ethics and Education or Traditional OHV Projects (trail improvements, maintenance/constructions, or steward positions)**

**Project Area Map\* FrontStreetTrailRTPFINAL.pdf**

*Click on Help for information on how to use the <http://mtnhp.org/mapviewer> website to find the center Latitude and Longitude of your project.*

**Center location of the project In Decimal Degrees, WGS84 or NAD83\* 45.657968**  
Latitude (##.####)

**Longitude \* -110.574326**  
Longitude (-###.####)

Last Edited By: Belh Shumate, 08/18/2015

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# Montana Grants and Loans

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## Grant Tracking

### Grant: 25981 - Front Street Trail and Trail Connection Project - 2015

**Status:** Underway

**Program Area:** FWP RTP Recreational Trails Program

**Grantee Organization:** Livingston, City of

**Program Officer:** Beth Shumate

**Awarded Amount:** \$20,000.00

### Instructions

Click on "add" to provide budget information for each line item that pertains to your project. There is a 20% matching requirement that can be derived of in-kind contributions, other funding sources or sponsor funds (volunteer labor can be calculated at \$15/hour). Federal project sponsors must contribute at least a 5% non-federal match. All applicants will have the opportunity to describe budget details in the "Funding Strategy Narrative" form. The grant totals at the bottom of the page will be auto-filled by the WebGrants system following completion of the budget form.

### RTP Project Budget

[Return to Components](#)

*Important! Identify amounts and sources of sponsor funds and in-kind contribution, including the value of volunteer labor. Be specific! For labor, list the number of employees, salaries, # of hours and the weeks/months of year this grant will finance. For materials, list the quantities of materials and cost thereof. For rent or purchase/lease of equipment, list the items of equipment and cost per item.*  
 \*Snowmobile/Cross Country Trail Grooming Operations Hourly Rates Utility Sled Used for Trail Grooming: \$20.00 per hour (does not include grooming labor) All Other Large Groomers: \$60.00 per hour (does not include grooming labor)

Category	Grant Request	Sponsor Funds	Value of In-Kind Contributions	Total Project Costs	Federal Appropriations (awarded amount)	Total Match Amount
<b>Design and Engineering</b>						
Design and Engineering	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Salaries/Payroll</b>						
Salaries/Labor	\$0.00	\$0.00	\$8,200.00	\$8,200.00	\$0.00	\$8,200.00
Taxes	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Construction/Materials</b>						
Materials	\$20,000.00	\$0.00	\$0.00	\$20,000.00	\$20,000.00	\$0.00
Construction Contracts	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Purchase/Lease of Maintenance Equipment	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Equipment Rental	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Operation of Maintenance Equipment	\$0.00	\$0.00	\$58,750.00	\$58,750.00	\$0.00	\$58,750.00
Miscellaneous Purchases and Services	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Grooming</b>						
Grooming Operations Rate at \$20/hr	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Grooming Operations Rate at \$60/hr	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Land Acquisition</b>						
Land Acquisition	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Contracted Services</b>						
Contracted Services	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Travel Expenses/Mileage &amp; Meals</b>						
Lodging	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Meals	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Mileage/Gas	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Totals</b>	<b>\$20,000.00</b>	<b>\$0.00</b>	<b>\$66,950.00</b>	<b>\$86,950.00</b>	<b>\$20,000.00</b>	<b>\$66,950.00</b>

### Public and Volunteer Assistance

#### Public and Volunteer Assistance (Matching Contributions)\*

Provide information about the level of public and volunteer assistance or non-traditional labor involved in project including public funding, private funds, fund donations, in-kind service, donated materials and labor. Volunteer labor used as part of the applicant's 20% (sponsor's funds, in-kind contributions and volunteer hours) may be billed at \$15/hour.

The City is providing an extensive amount of in-kind work to insure this project is a success. The budget below details the in-kind work that will be provided by the City to develop the trails. An extensive amount of in-kind work from both the City and Livingston HealthCare will occur to insure the success of the LTR program. As discussed in the partnerships section of this application, many local businesses will be asked to participate or donate goods for the LTR program. One example of that would be a contest where if individuals are 'caught' walking on the trail at a certain time during the contest, Timber Trails would outfit them with new running shoes, or a hat and water bottle.

#### Project Cost Information

City of Livingston 2015 RTP Budget- Front Street Trail and Trail Connection Project

**Financial Information.**

Category	Grant Request	City of Livingston	Total Project Costs
<b>Labor</b>			
(2) Public Works employees to install signs and dog stations for 120 hours at \$20/hour = \$4,800	\$0	\$8,200.00	\$8,200.00
(1) Supervisor to supervise work crew and project development for 40 hours (over a four week time period) at \$35/hour = \$1,400			
(1) Grant Manager to manage the project and complete required reporting and closeout documentation for 100 hours (over the course of the entire project) at \$20/hour = \$2,000			
<b>Materials</b>			
(1,250) cubic yards of gravel at \$9.25/cubic yard = \$11,562.50	\$20,000	\$0	\$20,000
(6) Stop signs at \$75/each = \$450			
(6) Safety signs at \$75/each = \$450			
(4) Leash Law signs at \$50/each = \$200			
(12) Trailhead connection maps \$75/each = \$900			
(12) Trailhead kiosks to hold the maps \$4,717.50			
(6) No Motorized Vehicle signs at \$40/each = \$240			
(28) Posts for all signs at \$40/each = \$880			
(2) Dog stations at \$300/each = \$600			
<b>Operation of Construction Equipment</b>			
(Rates are based on industry standard of 1% of cost of equip/hour and include operator wages. Operator salaries are based on the equipment being operated. Four employees are expected to work on this project for approximately four weeks.)	\$0	\$50,550	\$50,550
(2) Dump Trucks for 80 hours each at \$90/hour = \$14,400			
(1) Loader for 120 hours at \$135/hour = \$16,200			
(1) Grader for 90 hours at \$125/hour = \$11,250			
(1) Bobcat for 60 hours at \$45/hour = \$2,700			
(1) Roller for 75 hours at \$80/hour = \$6,000			
<b>Contracted Work</b>			
	\$0	\$0	\$0
<b>Total Project Costs</b>	<b>\$20,000.00</b>	<b>\$58,750.00</b>	<b>\$78,750.00</b>

Last Edited By: Beth Shumate, 08/18/2015

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**Backup material for agenda item:**

Please enter your agenda item text here.

Project	Details	Status
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## Public Works Projects

Vault Project	Filling in vaults in downtown that interfere with upcoming CIP Project.	Funding for the Project has been determined. Project was advertised for bid with the opening on March 10 <sup>th</sup> .
2016 Capital Improvement Project	Infrastructure (Roads, Sidewalks, Water and Sewer Mains) will be replaced on Callender from 2 <sup>nd</sup> to B street and a half block south on main.	Project has been designed by TD&H. At a community meeting on March 9 <sup>th</sup> community members indicated a different start date may be preferable. A survey is being sent out to business owners adjacent to the project.
O Street Trail	Creating a pedestrian and bike trail connecting O Street and the Veterans Bridge.	Stahly Engineering completed the design. The project has been submitted for a TA Grant
WRF Upgrades	Upgrading current plant to better treat waste water to meet new DEQ regulations and allow for growth.	For updates see website at <a href="http://www.livingstonwrf.com">www.livingstonwrf.com</a> 90% design has been completed and sent to DEQ for approval.
Brookstone Subdivision	Extension water and sewer service to Brookstone subdivision	City engineer and staff are working with developer to insure infrastructure is up the DEQ and City standards. Construction is expected to start this spring.
10 <sup>th</sup> Street Sewer Repair	Replacing a section of sewer main along N 10 <sup>th</sup> that has low spots to allow customers to connect services and prevent backups.	TD&H has received DEQ approval and construction will begin in Spring.
6 <sup>th</sup> and 7 <sup>th</sup> Street Water Upgrades	Replacing water mains in S 6 <sup>th</sup> and 7 <sup>th</sup> Street. Two of the lines in town that have been the most prone to breaking and leaking.	Design work has been sent to DEQ for approval.
Sewer Main Replacement	Replacing Sewer Main between 9 <sup>th</sup> and 10 <sup>th</sup> street from Geyser to Crawford.	Public Works and TD&H are working on securing Cost Estimates.
Pressure Reducing Valve	Connecting pressure zones and tanks in our water system to better serve in case of high water use from fires or main breaks.	Some will be on this construction project. Construction will begin as soon as the weather allows.
Skate Park	Building of a skate park to the east of civic center.	Design work has begun.



## Public Works Operations

