

COMMITTEE OF THE WHOLE

NOVEMBER 16, 2020

6:00 PM

1. There will not be a Committee of the Whole – the regular meeting will start at 7 pm and will be held virtually

Citizen Participation

The Lewistown City Commission welcomes you to its public meeting. The Commission appreciates your participation and values your input in our decision-making process. Your input and suggestions are important to the Commission as we discuss important issues affecting all of us in Lewistown.

The City Commission thanks public members for respectfully and courteously providing constructive and valuable information.

The Public is invited to speak on any issue under discussion by the Commission, after recognition by the presiding officer.

Public members who are recognized by the presiding officer shall:

- Stand
- Give his/her name and address for the record
- If applicable give the person, firm, or organization he/she represents
- Address comments to the presiding officer and not to individual members or staff
- Limit comments to the matter of fact listed on the agenda unless recognized in the 'Citizen Requests' portions of the meeting
- Keep comments brief to ensure adequate time for additional comment and commission business
- Prepared statements are welcome and should be given to the Clerk of the Commission. Prepared statements that are also read, however, may be deemed unduly repetitious if they are lengthy. All prepared statements shall become part of the official record.

In the event that there is a large number of people wanting to comment in a meeting or hearing, the presiding officer reserves the right to impose a time limit on comments to ensure adequate time for public comment and Commission business.

Impertinent or slanderous remarks towards city officials, staff or other members of the public, or other boisterous, disorderly or disruptive behavior during a Commission meeting are not permitted. Swearing, derogatory language, threats, personal attacks, heckling or similar behavior may be considered impertinent and/or disruptive. Any person exhibiting such behavior during the Commission meeting may be admonished to cease that behavior or risk being asked to vacate the Commission chambers. If such behavior continues after the admonishment, the presiding officer may request that person to vacate the Commission chambers, unless permission to remain is granted by vote of the Commission.

MASKS AND SOCIAL DISTANCING REQUIRED IF ATTENDING IN PERSON

**NOTICE FOR, AND AGENDA FOR, A REGULAR MEETING OF THE CITY COMMISSION,
CITY OF LEWISTOWN, NOVEMBER 16, 2020 AT 7:00 P.M. AT THE CENTRAL MONTANA
COMMUNITY CENTER LOCATED AT 307 W WATSON**

To join by zoom: <https://zoom.us/j/8486275925?pwd=dTVGbndDK253ZUJLMjRuZXU5QVpMdz09>
Meeting ID: 848 627 5925 Passcode: 59457

To participate by phone: dial (253) 215-8782 Meeting ID: 848 627 5925 Passcode: 59457

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES – November 2, 2020

COURTESIES

PROCLAMATIONS

BOARD AND COMMISSION REPORTS

CITY MANAGER REPORT

PUBLIC COMMENT – non agenda items

CONSENT AGENDA

The acknowledgement of the claims that have been paid from October 29, 2020 to November 13, 2020 for a total of \$157,979.91

***REGULAR AGENDA – Resolutions, Ordinance & Other Action Items:**

1. Discussion and action on awarding the 2021 snow hauling bids (**Action: approve, disapprove or amend awarding the 2021 snow hauling bids**) City Manager Holly Phelps
2. Discussion and action on approving the agreement between the City of Lewistown and the Fergus County Council on Aging (**Action: approve, disapprove or amend the agreement between the City of Lewistown and the Fergus County Council on Aging**) City Manager Holly Phelps
3. Discussion on City of Lewistown fees for City services and possible new revenue sources.

CITIZENS' REQUESTS

COMMISSIONER'S MINUTE

ADJOURNMENT

* All citizens are invited to make comment on any agenda item prior to action being taken by the Commission

DIANE OLDENBURG
DAVE BYERLY
Ward One Commissioners

PATTY TURK
DIANA HEWITT
Ward Two Commissioners

ALEXANDRA DUNNINGTON
GAYLE DONEY
Ward Three Commissioners

CLINT LOOMIS
At-Large Commissioner

HOLLY PHELPS
City Manager

NIKKI BRUMMOND
Finance Director/City Clerk



305 W. Watson, Lewistown, Montana 59457
(406) 535-1760 Fax (406) 535-3323

JIM DANIELS
Park and Recreation Director
MONTE BOETTGER
City Attorney

CORY BIRDWELL
Police Chief

JOSEPH WARD
Fire Chief

JR Killham
Public Works Director

DANIELLE BUEHLER
Library Director

CATHY BARTA
Planning Director

October 20th, 20120

The City of Lewistown Public Works Department is requesting bids for the following:

Hourly Equipment and Labor Rates. These rates will be utilized when bidders are assisting the City of Lewistown Public Works Department with EMERGENCY snow removal and snow hauling. This service will be on an on-call basis. Bidders are required to provide all snow removal and hauling equipment with operator within 12 hours after receiving such notice. All snow removal and hauling will be within the City of Lewistown. Please provide hourly operated rates for the following equipment below:

BID ITEMS:

<u>Equipment Description</u>	<u>Operated Hourly Rate</u>
Motor Grader (Minimum 6 foot blade	\$ <u>100/Hr</u>
Front End Loader (Minimum 1.5 CY bucket)	\$ <u>100/Hr</u>
End Dump (Minimum 10 CY capacity	\$ <u>100/Hr</u>

Company Name: Griffith Contracting

Signature: [Signature]

Date: 11/3/20

Generally snow removal and hauling will begin at 12:00 am (midnight) and continue for a ten hour shift or until the latest of 2:00 pm. Notice will be given as early as possible. The successful bidder will be given a minimum of 12 hours notice prior to beginning of work. The successful bidder will be required to supply up to three operated end dumps, one operated front end loader, and one operated motor grader for each requested shift. The successful bidder is responsible for insuring its

equipment and trucks are in safe and operational condition. The successful bidder is responsible for all licensing and insurance for its operators along with licensing, insurance, maintenance, fuel and compliance with all federal state and local laws of the equipment provided.

This contract will begin on January 1st 2021 and expire on December 31st, 2021. The city may request inspection of any proposed equipment prior to award of contract. Payment will be made per operated hour. The City of Lewistown has the right to accept or reject any and all bids, or accept the lowest responsible bid deemed to be the most advantageous to the City of Lewistown. For additional information, contact the Public Works Department at (406) 535-1770.

Bids must be received no later than October 10th at 1:00 pm. Bids will be opened at 1:10 pm on November 12th, 2020 in the City Office located at 305 W. Watson Street in Lewistown.

LEASE AGREEMENT BETWEEN FERGUS COUNTY COUNCIL ON
AGING AND CITY OF LEWISTOWN FOR USE OF CENTRAL
MONTANA COMMUNITY CENTER

THIS Lease Agreement hereinafter referred to as the "Agreement", made and entered into and effective as of the 9th day of June 2020, by and between the City of Lewistown, a municipal corporation of the State of Montana, located at 305 West Watson, Lewistown, Montana 59457, hereinafter referred to as "City", and the Fergus County Council on Aging, a non-profit corporation, with a mailing address of 307 West Watson, Lewistown, Montana 59457, hereinafter referred to as the "COA";

WITNESSETH

WHEREAS, the City is owner of all of that building and grounds known as the Central Montana Community Center hereinafter referred to as the "Center", located at 307 West Watson, more particularly located on Lot 6 of Block S-22 Original Townsite for the City of Lewistown; and,

WHEREAS, the COA was instrumental in establishing the Center and COA and the City had a twenty-five year lease arrangement for the premises since June 8, 1995;

WHEREAS, the lease between the parties w expired June 8, 2020 and COA desires to continue to lease and operate the Center and,

NOW, THEREFORE, it is mutually understood and agreed by and between the parties hereto as follows:

1. PREMISES:

The City, for and in consideration of the covenants to be performed by the COA, does hereby enter into an agreement with the COA for the lease of the following described premises situated in the City of Lewistown, County of Fergus, State of Montana, to wit:

All of that building known as the Central Montana Community Center at 307 W. Watson, Lewistown Montana located on Lot 6 of Block S-22 Original Townsite for the City of Lewistown.

a. Parking – main parking lot. The parking area adjacent to COA shall be for the use of clients/customers of COA and City and not for staff or other parking by either entity, leniency will be used during times of inclement weather. However, COA shall be allotted six (6) parking spaces for daily use for transportation vehicles in accordance with the parking plan attached as Exhibit B. Such spaces shall not be utilized for storage or long-term parking. Vehicles shall be moved or temporarily relocated to facilitate snow removal or maintenance.

b. Parking – secondary parking lot. The parking area adjacent to COA across Water Street is reserved for City vehicles and staff and City/COA customers. COA shall be allotted five (5) parking spaces for use for staff and bus parking. COA may lease up to five (5) additional spaces at the rate of \$25.00/space/month. Parking spaces may only be utilized by COA vehicles for daily parking and not storage. Vehicles shall be moved at least every five days. Vehicles shall be moved or temporarily relocated to

facilitate snow removal or maintenance. This parking area is depicted in Exhibit C.

3. TERM:

a. The COA shall lease the Center for and during the full term of five years from and after the 9th day of June 2020, to and including the 8th day of June 2025, unless sooner terminated as provided for in Paragraphs 10 and 13 herein.

4. UTILITIES:

a. The COA shall have all utilities, including but not limited to electricity, gas, water and sewer placed in its name and shall pay all bills thereof.

5. CARE OF CENTER, IMPROVEMENTS BY THE COA:

a. The COA, at its expense, shall provide full, professional janitorial service to the building. The service provider and schedule of cleaning shall be approved by the City. Further, the COA shall maintain at its expense the entire interior of the building in satisfactory condition including, but not limited to overall cleanliness, heating, air conditioning, refrigerators, freezers, appliances, plumbing, light fixtures and bulbs and all utilities. The City shall conduct at least weekly, after hour, inspections of the building and provide a report to the City and COA. The City at its expense shall maintain the exterior of the building including the roof, exterior walls and windows and shall be responsible for any required maintenance or repairs thereto, excluding external mechanical equipment,

planter boxes, landscaping or property belonging to the COA. The City shall provide snow removal from the parking lot and perimeter sidewalks adjacent to the streets. The COA shall keep all other public sidewalks free of ice and snow. The City shall also maintain the parking lot.

b. Upon termination of this Agreement, whether by forfeiture or expiration of the term of this Agreement, the COA will redeliver possession of the Center to the City in as good condition and state of repair as existed at the time this Agreement originally took affect, reasonable wear and tear and damage by the elements excepted.

c. COA shall not make any change or alteration in the building or to its structure nor place any signs on the exterior building or the exterior premises without first having obtained the written consent of the City Manager or such other persons as the City Manager may designate in writing. All such improvements become a permanent part of the Center and shall become the property of the City.

d. All property purchased with City funds shall remain the property of the City.

e. All property donated to the City for use at the Center shall be and remain the property of the City.

f. Property owned by the COA and not attached to the Center shall remain the property of the COA. A list of COA property is set forth in Schedule A attached hereto and incorporated by reference herein. Schedule A may be amended by the parties from time to time as equipment

and property is either acquired or disposed of. At a minimum, Schedule A shall be updated annually.

g. Maintenance and insurance coverage of property owned by the COA or other groups or individuals shall continue to be the responsibility of COA or the owner thereof.

6. BUILDING IMPROVEMENT AND REPAIR ACCOUNT:

a. Notwithstanding the City's obligation to maintain the exterior of the building as provided in paragraph 4.a, in order to defray such cost to the City, the COA shall establish a separate building reserve account whose only use shall be for future replacement or repairs to the exterior of the building. Proceeds in this account shall be utilized only by mutual consent of the City and the COA. The COA agrees to fund this account in the amount of at least \$1,000.00 per year commencing June 8, 2020, which yearly amounts will continue to accumulate if not spent as provided herein. An additional \$1,000 will be paid to the City to be help with offset improvements of Commission chambers. These amounts may be reviewed on an annual basis to determine the level of the COA's annual contribution to these accounts.

b. At the end of this lease, either by its expiration or by its earlier termination, the balance of the building reserve account shall be transferred to the City and the City shall only utilize any such money for the repair of the building.

c. The COA shall provide an annual accounting to the City of the building reserve account.

7. USE OF THE PREMISES:

a. It is understood and agreed that COA's primary mission is the provision of services for senior citizens. The COA also agrees to operate and manage the Center as a public Community Center, establishing such policies, rules and regulations as may be necessary to insure that the Center will be available for use by the public. The COA further agrees that it will not use or permit the use of the premises contrary to any laws of the State of Montana or ordinance of the City of Lewistown.

b. Rental charges and fees for the use of the Center by the public shall be approved by the City. The COA shall be responsible for collecting such charges hereunder, which shall be retained by the COA. All charges shall be directly related to the actual cost of operating and maintaining the Center.

The COA may lease its equipment, use of personnel and personal property under such terms and conditions as it may deem appropriate.

c. All individuals and organizations using the facility shall schedule and coordinate their activities with the COA and the COA agrees to provide the necessary personnel, equipment and supplies necessary to adequately perform this requirement.

d. Non-senior functions shall be scheduled by COA so as not to conflict with scheduled senior activities.

e. The City shall be entitled to hold City Commission meetings, committee meetings, public hearings and other official City functions in the Center without charge. The City shall be provided, without charge, a secure storage area for items regularly used at City Commission meetings. The COA agrees that no activities or other use of the Center shall be scheduled for regular City Commission meeting days from 5:00 p.m. on. Special City Commission meetings, committee meetings, public hearings and other City functions shall be scheduled with the COA.

f. All persons and organizations using the Center or grounds shall abide by the rules established by the COA and approved by the City except as herein provided.

g. At all times, at least one representative of the City shall serve on the COA Board as a non-voting member.

h. The COA Director shall attend the first regular City meeting in May of each year and provide a report to the City Commission on the condition of the Center and any plans for ongoing operations or proposed improvements thereof.

8. RIGHT OF ASSIGNMENT:

The COA will not assign this Agreement, or any part thereof, unless approved in advance in writing by the City. The City shall have no obligation to agree to any assignment of the Agreement.

9. NON-DISCRIMINATION:

No person shall, on the basis of race, creed, sex, sexual preference, color, age, national origin, marital status, handicap, religion, membership or any other constitutionally recognized right be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under any program or activity carried out or conducted in the Center or upon its grounds.

10. OFFICE SPACE:

The COA shall not sublet office spaces available in the Center unless otherwise approved in writing by the City.

11. DEFAULT:

In the event the COA fails to fulfill any of the covenants herein contained, or allows any illegal activities or violations of the law to occur or be conducted on the premises and such violation or default continues unremedied for a period of thirty (30) days after written notice specifying such default shall have been mailed to the COA then and in such event, it shall be lawful for the City to enter and take full and absolute possession of the above described premises and to hold and enjoy the same fully and absolutely or the City may re-enter and remove the COA and those claiming under it by means of summary proceedings required by law to be given or taken preliminary to re-entry by the City under the terms hereof.

12. INDEMNIFICATION and INSURANCE:

a. The COA agrees to indemnify and save the City harmless of and from any and all liability, damage, expense, cause of action, suits, claims or judgments resulting from injury to person or property occurring within the premises or on the adjoining property which arises out of the act, failure to act, or negligence of the COA, the COA's agents, employees, invitees or guests.

b. The COA further agrees that it will, at all times during the term of this Agreement, maintain and pay for comprehensive general liability insurance affording protection to the City and the COA, naming the City as an "additional insured" under the policy or policies for combined bodily injury and property damage limit of liability of not less than one million dollars (\$1,000,000.00), for each occurrence. The COA further agrees to deliver to the City, annually, a certificate or certificates of an insurance company or insurance companies satisfactory to the City, evidencing such insurance and that the City is named as an "additional insured" on the comprehensive general liability insurance policy or policies.

13. PROPERTY INSURANCE:

a. The City agrees that it will, during the original term hereof, or any extension thereof, keep in effect upon the premises, such insurance as it deems necessary on the shell of the building and such fixtures as are a part of the building, excluding those listed in Schedule A. Any proceeds received on account of a claim made on such insurance due to a loss on the

Center shall be applied to the repair, restoration or replacement of the covered property damaged.

b. Except as otherwise specified herein, the COA shall be solely responsible for all property listed on Schedule A and for any other property belonging to it or any third party and may insure such as the COA desires. COA shall be responsible for obtaining and maintaining any insurance coverage for property owned by COA.

14. TERMINATION OF AGREEMENT:

a. If the premises shall be so damaged by fire or other casualty as to be rendered untenable, and amount virtually to the complete destruction thereof, and both the City and COA agree not to repair the same, this Agreement shall cease and end as to both parties.

b. The City or COA may terminate this Agreement for any reason upon 24 months written notice to the other.

15. MISCELLANEOUS COVENANTS AND PROVISIONS:

a. Neither COA or the City shall be deemed to have waived any provision of the Agreement unless such waiver is in writing signed by the City and the COA; This Agreement may be modified only by a writing signed by both parties.

b. The City shall have the right to re-enter upon and into the premises or any part thereof after reasonable notice to inspect the same or to make any repairs that it may desire or which might be required to

it. The City may enter the premises without notice in the event of an emergency.

c. The covenants and conditions of this Agreement shall be deemed continuing and any forbearance by the City to enforce forfeiture on the occasion of one or more breaches thereof shall not be construed as a waiver of the right to enforce such forfeiture on any subsequent breach.

d. All notices prescribed herein shall be written and served by registered mail and directed to the City at 305 W. Watson, Lewistown, Montana 59457, Attention: City Manager, or such other place as the City may specify in writing, and to the COA at 307 W. Watson, Lewistown, Montana 59457, Attention: Director.

e. It is mutually agreed and understood that in the event either party hereto shall bring any legal action against the other to enforce any right or obligation based upon this Agreement, each party shall bear its own costs and expenses of any kind and nature whatsoever incident to the prosecution or defense of such action or the preparation thereof, including attorney's fees.

f. It is mutually agreed that time shall be of the essence of this Agreement, that the terms hereof shall bind the successors and assigns of the parties and that all prior understanding of the parties, either written or oral are merged herein and that this document constitutes the entire understanding of the parties.

g. The provisions of the Agreement are severable and the invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provision.

h. COA agrees to keep the property free of all liens during the existence of this Agreement or any renewals thereof and it is expressly agreed that the City shall not be liable for any obligation incurred on or in connection with the premises by the COA unless otherwise herein provided. It is agreed that no liens may be filed against the City's interest herein because of such obligation.

i. The COA is an independent contractor, and as such, shall have and maintain sole and complete control over all of its employees, subcontractors, agents, and operations. Neither the COA nor anyone employed by it shall be, represent, act, purport to act or be deemed the agent, representative, subcontractor, employee, officer or servant of the City.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed, effective the day and year first above written.

City of Lewistown

By: Holly Phelps
City Manager

Attest:

Nikki Brummond, City Clerk

Fergus County Council on Aging

By: Dale Pfau
Director

State of Montana)
County of Fergus) ss

On this _____ day of _____, 2020, before me, a Notary Public for the State of Montana, personally appeared Nikki Brummond, Holly Phelps and Dale Pfau, known to me to be the persons who executed the foregoing instrument and acknowledged to me that he/she/they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Notarial Seal the day and year written in this certificate.

Notary Public

Exhibit B



