

COMMITTEE OF THE WHOLE

JUNE 5, 2023

6:00 P.M.

1. Discussion on proposed changes to the parking ordinance.
2. Discussion on options for Chicks inside the City limits

NOTICE FOR, AND AGENDA FOR, A REGULAR MEETING OF THE CITY COMMISSION, CITY OF LEWISTOWN, JUNE 5, 2023 AT 7:00 P.M. AT THE CENTRAL MONTANA COMMUNITY CENTER LOCATED AT 307 W WATSON

To participate virtually the options are as follows:

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 – May 15, 2023

COURTESIES

PROCLAMATIONS

BOARD AND COMMISSION REPORTS

CITY MANAGER REPORT

PUBLIC COMMENT – non agenda items

CONSENT AGENDA

Acknowledgment of the claims that have been paid from May 12, 2023 to May 31, 2023 for a total of \$172,392.62

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

1. Discussion and action on City of Lewistown Event application requirements (**Action: approve, disapprove or amend event application requirements**) City Manager Holly Phelps
2. Discussion and action on the Commission's desire to proceed with allowing chickens in the City limits (**Action: approve, disapprove or amend options for chickens in the city limits**) City Manager Holly Phelps
3. Discussion and action on authorizing the City Manager to sign on behalf of the City of Lewistown as the fiscal agent for the 2023 Urban and Community Forestry subaward agreement awarded to the Lewistown Downtown Association Program Development Project (**Action: approve, disapprove or amend City Manager signing 2023 Urban and Community Forestry subaward agreement**) City Manager Holly Phelps
4. Discussion and action on appointing Josh Stoychoff to the Park and Recreation Board (**Action: approve, disapprove or amend appointing Josh Stoychoff to the Park and Recreation Board**) City Manager Holly Phelps

5. Discussion and action on approving Resolution No. 4123, a resolution relating to \$5,150,000 water system revenue bonds (DNRC Drinking water state revolving loan program), consisting of \$750,000 subordinate lien taxable series 2023A bond and \$4,400,000 series 2023B bond; authorizing the issuance and fixing the terms and conditions thereof (**Action: approve, disapprove or amend Resolution No. 4123**) City Manager Holly Phelps

6. Discussion and action on authorizing the City Manager to sign a memorandum of understanding between the Montana Department of Transportation and the City of Lewistown for the state funded City Park rest area maintenance program FY 2024 (Kiwanis Park public rest area) (**Action: approve, disapprove or amend authorizing the City Manager to sign the MOU between the MDT & the City**) City Manager Holly Phelps

7. Discussion and action on approving the 2020 – 2023 Park Maintenance Contract (**Action: approve, disapprove or amend approving 2020-2023 Park Maintenance Contract**) City Manager Holly Phelps

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

SPECIAL EVENTS COVERAGE

As we move closer to Spring, many of us are ready to get out and enjoy our municipal spaces for: sporting events, farmer's markets, concerts, sidewalk sales, weddings & receptions, car shows, and fun times.

In the coming weeks, MMIA will receive many inquiries regarding the use of municipal properties by individuals and organizations (the Event Holder) for their own events.

We are often asked if there are any concerns the municipality should be aware of, and how the municipality should limit their exposure on events it isn't sponsoring or controlling. MMIA has always maintained that if exposures are created by others who are using municipal facilities and if you (the city/town) can't control the outcome, then you should transfer that exposure onto the Event Holder. If you can't control the outcomes, you can't manage the risk. If you can't manage the risk, you should require the Event Holder who can manage the risk, to assume the exposure by accepting the liability for the event and providing insurance.

A SPECIAL EVENT could be anytime an Event Holder wants to use municipal property for their own event. Each of these events comes with its own list of hazards and risk that could result in the injury to the public, an event attendee, or an innocent by-stander. It could also cause damage to municipal structures and property.

A SPECIAL EVENTS POLICY, purchased by the Event Holder, would provide liability insurance for injuries to others or the damaging of municipal property during the event.

WITHOUT A SPECIAL EVENTS POLICY, the Event Holder could be vulnerable to the financial responsibility & risks that are not normally covered under their homeowner's policy or their current business insurance policy. The resulting out-of-pocket liability costs could be devastating to them as well as the municipality. Without coverage, the municipality could be retaining the cost of repairing the damaged property the municipality owns as well as the potential of having to address a claim for injury to someone who attended the event if the Event Holder did not secure the appropriate insurance coverage. Having the appropriate coverage helps to preserve the reputational risk of the Municipality and the Event Holder.



EVENT HOLDERS CAN PURCHASE SHORT-TERM AFFORDABLE COVERAGE

for various types of events through the Special Event Liability Coverage MMIA has developed with the Independent Insurance Association of MT and their Authorized Special Events Agencies throughout Montana.

This program has features such as:

- Naming the municipality as an additional insured
- Options to purchase increased liability limits
- Purchase liquor liability coverage

You can get connected to the agencies or the Independent Insurance Association of MT through the [MMIA Risk Management page](#).

INSTRUCTIONS FOR OBTAINING COVERAGE

1

City/Town receives a request to use public property and provides the applicant the city's/town's permit/agreement requirements.

2

Refer the Event Holder to a list of local agents. Go to www.mmia.net/riskmanagement/speialevents/

3

The Event Holder contacts an agent, completes the application and pays the premium. The holder must allow a minimum of 5 business days prior to the event for coverage to be offered.

4

When the event is covered, a certificate of insurance will be issued naming the municipality as an additional insured.

FOR A CLOSER LOOK,
call Risk Management at

1-800-635-3089
or email us at
riskmgmt@mmia.net

City of Lewistown

EVENT - PARADE – STREET CLOSURE POLICY

An event deposit of \$100 will be required in the following situations:

An event that allows animals. The applicant is responsible for cleanup after animals. If the clean up of animals is not done, then the City Manager will determine how much of the deposit will be returned to the applicant.

If barricades and signage are installed by the applicant. The barricades and signage must be returned in the same condition received. If there are missing or damaged items then, the City Manager will determine how much of the deposit will be returned to the applicant.

An event fee of \$100 will be required in the following situations:

An event that causes the City to incur overtime will be expected to pay the \$25 permit fee and the \$100 event fee. In some instances, these types of events may be required to pay a \$100 deposit.

Insurance:

The City of Lewistown requires that an Event permit holder have their own liability insurance policy.

Minimum amounts are \$750,000 per claim and \$1,500,00 per occurrence

The City of Lewistown must be named as an additional insured for the event or activity for which the event permit is issued.

A copy of the insurance policy Certificate of Insurance must be attached to the Event use permit prior to final approval.

If alcohol is consumed or served at the event, then a host liquor liability of not less than \$1,000,000.

Miscellaneous items:

The applicant must be in good standing status with the City of Lewistown to make application for an event.

Accident reporting: In the event of an accident or emergency, the applicant is required to complete a City of Lewistown incident report and submit to the City Clerk's office within 24 hours of the accident.

*Any person residing outside of Fergus County

Whereas Clauses

- It is the intent of the Lewistown City Council to provide for and protect the health, safety and welfare of the citizens of Lewistown, promote residential harmony and ensure the well-being of properly maintained domestic chickens through effective regulation.
- The Lewistown City Council acknowledges that having chickens within an urban environment has the potential to affect the interests of others.
- Certain minimum standards for keeping chickens is necessary to protect the health, welfare and quality of life of both the animals and citizens of Lewistown.
- It is the intent of the Lewistown City Council to provide and maintain, for the citizens of Lewistown, opportunities for the healthy consumption of locally produced foods and products.
- The Lewistown City Council acknowledges that the act of food production on one's own property may improve the quality of life of its residents.
- The Lewistown City Council acknowledges that the husbandry of an appropriate number of domestic female chickens may provide a sustainable and cost-effective food source.

Ages and Number

- It shall be lawful to keep of up to six (6) female domestic chickens (hens) **over** the age of three (3) months, or six (6) either sex domestic chickens **under** the age of three (3) months, or any combination thereof not to exceed a total of six (6) chickens, per permit holder.
- No male chickens (roosters) over the age of three (3) months are permitted.
- The keeping of up to six (6) chickens, but no roosters, shall be allowed in all districts allowing residential use.
- Up to six (6) chicken hens (Female Gallus gallus domesticus) may be kept on a premise.

Location

- Chickens shall be kept only on single-family lots and are prohibited on multi-dwelling parcels.
- No chicken enclosure, or part thereof, shall be located within ten (10) feet of a sidewalk, city street, alley, or neighboring property line, within twenty feet of a neighboring residence, or in a front yard.
- Chickens shall not be permitted in areas prohibited by subdivision covenants.
- There is no minimum lot size requirement if the setbacks listed above can be met.
- No coops or runs shall be in the front yard. In addition, for corner lots, side yard setbacks shall not be used.
- All chickens must be kept in a coop within a fenced back yard.
- Chickens will not be permitted on any property zoned for commercial use as designated by the City of Lewistown.

Facilities

- The chickens shall be provided with a covered, predator-proof chicken house that is thoroughly ventilated and of sufficient size to admit free movement of the chickens.
- Any heat source or electrical facilities installed in a chicken house must comply with all adopted buildings and electrical codes of the City of Lewistown.
- During daylight hours the chickens shall have access to the chicken house and run, and weather permitting, shall have access to an outdoor enclosure on the subject property, adequately fenced to contain the chicken hens and to prevent access to the chicken hens by predators.
- Chicken houses and enclosures may be movable provided they meet the setbacks defined above.
- Chickens shall be secured within the chicken house from sunset to sunrise.
- Chicken enclosures and houses must be kept in neat and sanitary condition at all times and must be cleaned on a regular basis so as to prevent offensive odors.

- Chickens shall have continuous access to adequate food and water.
- Stored feed must be kept in a rodent-proof and predator-proof container.
- The permittee shall provide the chickens with a covered, predator-proof chicken house that is thoroughly ventilated, of sufficient size to admit free movement of the chickens. The chicken house must be adjacent to and provide free access to the chicken enclosure.
- The chicken hens shall be provided with a covered, predator-proof chicken house that is thoroughly ventilated, of sufficient size to admit free movement of the chicken hens, designed to be easily accessed, cleaned and maintained by the owners, be at least 4 square feet per chicken hen in size within the house, and 8 square feet per chicken in the run.

Other Standards

- No chickens shall be allowed to run at large within the corporate limits of the City of Lewistown.
- Any chicken found to be running at large shall constitute a public nuisance and shall be impounded in the animal shelter. Any impounded chicken shall not be released to the owner until the owner has paid an impoundment fee established by the City Commission. Any chicken not reclaimed by the owner within 12 hours of impoundment shall be deemed abandoned and may be destroyed or otherwise disposed of in a manner deemed appropriate by the Animal Control Officer.
- Chickens shall be maintained in a healthy condition. Ill chickens shall either receive appropriate medical care or be culled.
- No chicken shall be kept in a manner so as to create noxious odors or noise of a loud, persistent and habitual nature.
- No chicken hens shall be slaughtered within view of adjacent property or the public.
- No chicken shall be permitted to roam freely outside of a run.

Permits/Inspections

- Prior to the keeping of any chicken(s), a party seeking to keep chickens shall obtain a permit from the City of Lewistown. A permit fee may be established by resolution of the City Commission and may be revised from time to time. Only one permit shall be issued per household. Issuance of a permit is a discretionary act.
- A permit for chickens under this section does not relieve any party from any requirement to obtain any other permit or other necessary approvals for any structure, fence, lighting, heat source, etc. as required by the Lewistown City Code.
- A permit to keep chickens is specific to the permit holder and the location of the permit. A person wishing to move chickens to a different property shall obtain a new permit. A new resident of a property who intends to keep chickens shall obtain a new permit.
- Nothing in this section shall prevent an Animal Control Officer from requiring an inspection of a property prior to or after issuance of a permit for any number of chickens. A 48 hour notice will be provided to the home owner stating the intent to inspect the property for compliance of this code.
- Changes to the standards contained in this section shall require any permit holder to comply with any new standard, regulation, or condition and no notice to a permit holder is required prior to enforcement of any new standard beyond that required for adoption of a new or revised ordinance.
- A "to scale" drawing must be provided by the permit applicant, outlining the property, coop and run to ensure the appropriate setbacks are capable of being met on said property.

Protest and Hearing

- If a person receives a citation for a violation of the ordinance, they are to pay it at the City Offices within 10 days.
- If the person wishes to contest it, they will file a written protest and deliver it to the City Manager within 10 days of receiving the citation. The protest will outline any defenses, and specific facts to support the protest.
- The City Manager will review the reports and the written protest and will decide as to whether to dismiss the citation. If the City Manager finds the violation meets the allegations in the citation, the Defendant will be informed in writing as to the decision within 30 days of receipt of the citation.
- If the Defendant does not agree with the City Manager's decision, they can appeal to the Board of Adjustment. (Follow procedures for the board of adjustment.)
- The ruling of the Board of Adjustment is final.

Enforcement and Penalty

- The first violation of the ordinance is \$100.
- A second violation of the ordinance is \$250.
- A third violation of the ordinance is \$500 and revocation of Defendant's permit.

Left Off Provisions

- Amendments to current code
- Transition
- Repealer
- Savings Provision
- Severability
- Effective Date

FOR DNRC USE ONLYMaximum amount under this Subaward Agreement: **\$12,000.00****Source of Funds**

USDA FS Grant # 22-DG-11010000-012; FAL # 10.664

Subaward #	UCF-23-102
Amendment #	N/A
Approved by	
Program	JK
Fiscal	LP
Legal	MP

<u>Fund</u>	<u>Subclass</u>	<u>Org</u>	<u>Percent</u>	<u>Amount</u>	<u>Expiration</u>	<u>Amendment</u>
03805	555BM	5114623	100%	\$12,000.00	See Sect. 2	N/A

Workers Comp: ☒ N/A ☐ Attached ☐ Exempt ☐ Will be forwarded

**2023 URBAN AND COMMUNITY FORESTRY SUBAWARD AGREEMENT
LEWISTOWN DOWNTOWN ASSOCIATION PROGRAM DEVELOPMENT PROJECT**

This Subaward Agreement (Subaward) is accepted by Lewistown Downtown Association, hereinafter referred to as the "Subrecipient," Federal ID No. 90-0515040, UEI# DY1NHYPYQTEJ6, 320 Ridgelawn Avenue, Lewistown, Montana 59457-2033, telephone (406) 366-3919. And by the Subrecipient's fiscal agent, City of Lewistown, hereinafter referred to as the "Fiscal Agent", Federal ID No. 81-6001284, UEI# K9E1DGT18UL1, 305 W Watson Street, Lewistown MT 59457-2961, according to the following terms and conditions.

This Subaward, awarded and administered by the Montana Department of Natural Resources and Conservation (DNRC), is consistent with the policies, procedures, and objectives of the Cooperative Forestry Assistance Act of 1978, Public Law 95-313, as amended. This Subaward is awarded under federal grant #22-DG-11010000-012; Consolidated Forestry Programs Grant, executed on 07/25/2022, from the United States Department of Agriculture (USDA) – Forest Service (USFS) and The Federal Assistance Listing (FAL) number 10.664, "Cooperative Forestry Assistance."

SECTION 1. PURPOSE. The purpose of this Subaward is to establish mutually agreeable terms and conditions, specifications, and requirements to grant funds to the Subrecipient for an Urban and Community Forestry (UCF) Program Development project in downtown Lewistown, Montana. Basis for this subaward is the UCF Program, which is administered through a partnership with the United States Department of Agriculture, Forest Service (USFS), and the DNRC. The approved Program Development Project Proposal for this Subaward to the Subrecipient is attached hereto as Appendix B and is incorporated herein by reference.

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Lewistown, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. 4123, entitled: "RESOLUTION RELATING TO \$5,150,000 WATER SYSTEM REVENUE BONDS (DNRC DRINKING WATER STATE REVOLVING LOAN PROGRAM), CONSISTING OF \$750,000 SUBORDINATE LIEN TAXABLE SERIES 2023A BOND AND \$4,400,000 SERIES 2023B BOND; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS THEREOF" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Commission of the City at a meeting on June 5, 2023, and that the meeting was duly held by the City Commission and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Commissioners voted in favor thereof: _____
_____; voted against the same: _____
_____; abstained from voting thereon: _____
_____; or were absent: _____.

WITNESS my hand officially this ____ day of June, 2023.

Finance Director

MEMORANDUM OF UNDERSTANDING BETWEEN
THE MONTANA DEPARTMENT OF TRANSPORTATION
AND
THE CITY OF LEWISTOWN
FOR THE
STATE-FUNDED CITY PARK REST AREA MAINTENANCE PROGRAM
SFY 2024

This Memorandum of Understanding (MOU) is entered into by and between the Montana Department of Transportation (MDT), whose address is 2701 Prospect Avenue, Helena, MT 59620 and the City of Lewistown (CITY), whose address is 305 W. Watson Street, Lewistown, MT 59457. This memorandum establishes the roles and responsibilities relative to maintenance of the city park rest areas.

WHEREAS, MDT recognizes the need to maintain rest area facilities for the traveling public along Montana's Primary and Non-Interstate National Highways; and

WHEREAS, MDT's Montana Rest Area Plan provides state funds, subject to the necessary approvals by the Legislature for the maintenance of the facility; and

WHEREAS, the CITY desires to repair and maintain public rest areas within its city parks; to continue providing an important service to highway users; and

WHEREAS, it is to the advantage of both the MDT and the CITY to coordinate their efforts in accomplishing this agreement without duplication of efforts.

NOW, THEREFORE, in consideration of the following mutual promises,

ARTICLE I – GENERAL OBLIGATIONS OF THE CITY

A. The CITY will:

- 1) Maintain and repair public rest areas within its city parks, including all eligible activities approved by MDT's Facilities Bureau associated with facility maintenance, utilities, cleaning supplies and janitorial services necessary to provide a clean and safe rest area facility.
- 2) Submit claims/bills for all eligible costs for the time period of July 1, 2023 to June 30, 2024 directly related to the maintenance of rest areas and agreed upon between the MDT and the CITY by **June 30, 2024**. All costs billed will be for the actual amount and supported by an acceptable accounting system. Efforts may be performed by other entities through local agreements; however, MDT will only reimburse the CITY.
- 3) Agree eligible costs include janitorial supplies, labor, garbage disposal, grounds maintenance, and utilities necessary to provide a safe and clean rest area. Other items will be considered on a case-by-case basis with MDT's prior approval. Reimbursements are limited to costs directly benefiting the traveling public.

ARTICLE II – GENERAL OBLIGATIONS OF MDT

A. MDT will :

- 1.) Reimburse the CITY costs not to exceed \$6,965.00 for eligible activities approved by MDT's Facilities Bureau associated with facility maintenance, utilities, cleaning supplies, and janitorial services necessary to provide a safe and clean rest area facility. If there are additional funds remaining in the overall program budget for the period of performance of the contract, MOUs may be reevaluated for eligible costs above the agreed upon budget.
- 2.) Make payment within 30 days of the submittal of a properly executed invoice/request for reimbursement.
- 3.) Periodically inspect each facility to ensure the facility has been maintained to a satisfactory manner.

ARTICLE III – GENERAL TERMS AND CONDITIONS

A. Both parties agree as follows:

- 1.) Term - The term of this Agreement shall be for State Fiscal Year 2024 (July 1, 2023 through June 30, 2024).
- 2.) Termination -The parties may mutually terminate this Agreement in writing at any time. MDT, at its sole discretion, may terminate or reduce the scope of this Agreement if available funding is reduced for any reason. MDT may terminate this Agreement in whole or in part at any time CITY fails to perform the Agreement terms as set forth.
- 3.) Hold Harmless & Indemnification – The CITY agrees to protect, defend, indemnify, and hold MDT, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the CITY's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of the CITY, its agents, or sub-contractors, under this Agreement, except the negligence of MDT.

The State and Department of Transportation agrees to protect, defend, indemnify, and hold the CITY, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the MDT's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of MDT, its agents, or sub-contractors, under this Agreement, except the negligence of the CITY.

- 4.) Insurance

General Requirements: Each party shall maintain for the duration of this Agreement, at its own cost and expense, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the duties and obligations in this Agreement by each party, its agents, employees, representatives, assigns, or sub-contractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

General Liability Insurance: Each party shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1 million per occurrence and \$2 million aggregate per year to cover such claims as may be caused by or arising out of any negligent acts or omissions in work or services performed under this Agreement, or as established by statutory tort limits as provided by a public entity self-insurance program either individually or on a pool basis as provided by Mont. Code Ann. Title 2, Chapter 9.

General Provisions: All insurance coverage must be with a carrier licensed to do business in the State of Montana or by a public entity self-insured program either individually or on a pool basis. Each party must notify the other immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. Each party reserves the right to request complete copies of the other party's insurance policy or self-insured memorandum of coverage at any time.

Workers' Compensation Insurance: The CITY must maintain workers' compensation insurance and require its contractors and its contractor's sub-contractors to carry their own workers compensation coverage while performing work within MDT right-of-way in accordance with Mont. Code Ann. §§39-71-401 and 39-71-405. Neither the contractor nor its employees are employees of MDT. This insurance/exemption must be valid for the entire Agreement period.

- 5.) Amendment - This agreement may be modified only by a written amendment, signed, and dated by both parties.
- 6.) Governing Law & Venue - This MOU shall be governed by the laws of the State of Montana. Venue for any litigation will only be in the First Judicial District Court, Lewis and Clark County, State of Montana.
- 7.) Binding Effect- The obligations set forth in this MOU shall be binding upon, and the benefit of this MOU shall inure to the benefit of, the party's respective successors and assigns.
- 8.) Relationship of the Parties - Nothing contained in this MOU shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or create any partnership, joint venture or other association between MDT and the CITY.
- 9.) Non-Discrimination- During the performance of any work arising out of this MOU the CITY, for itself, assignees and successors shall comply with all applicable non-discrimination regulations shown on MDT's Non-Discrimination and Disability Accommodation Notice, Attachment A, which is hereby incorporated by reference.

Additionally, MDT requires that any construction resulting from this MOU must include appropriate pedestrian facilities that meet or exceed current MDT standards for accessibility as set forth in the U.S. Architectural & Transportation Barriers Board, American with Disabilities Act Accessibility Guidelines (ADAAG) and MDT Detailed Drawings, 608 Series.

10.) Audit – The CITY agrees the Legislative Auditor and the Legislative Fiscal Analysts may audit all records, reports, and other documents, which the CITY maintains under or in the course of this agreement to ensure compliance with this agreement. Such records, reports and other documents may be audited at any reasonable time.

11.) Access and Retention of Records – The CITY agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine compliance with this Agreement. The CITY agrees to create and retain records supporting this Agreement for a period of three years after the completion date of this Agreement or the conclusion of any claim, litigation or exception relating to this Agreement taken by the State of Montana or a third party.

12.) Compliance with Laws – The CITY, in the performance of this Agreement, fully comply with all applicable state or local laws, rules and regulations, including but not limited to the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973.

13.) Severability and Integration – If any single part or parts of this Agreement are determined to be void, the remaining parts will remain valid and operative. This Agreement, as written, expresses the total, final and only agreement of the parties relevant to its subject matter. No provision, expressed or implied, arising from any prior oral or written request, bid, inquiry, negotiation, contract, or any other form of communication shall be a provision of this Agreement unless specifically provided within the written terms herein.

14.) Counterpart Execution - This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

APPROVED FOR THE CITY OF LEWISTOWN:

By: _____ Date: _____

APPROVED FOR THE STATE OF MONTANA DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

Reviewed for:

Legal Content

By: DocuSigned by:
Valerie Balukas Attorney MDT
438370D1D1D44CE...

Civil Rights

By: DocuSigned by:
Megan Handl Civil Rights
4EE5888EF563494...

ATTACHMENT A

Rev. 01/2022

MDT NONDISCRIMINATION AND

DISABILITY ACCOMMODATION NOTICE

Montana Department of Transportation ("MDT") is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter "protected classes") by its employees or anyone with whom MDT does business:

Federal protected classes

Race, color, national origin,
sex, sexual orientation, gender
identity, age, disability, income-level
& Limited English Proficiency

State protected classes

Race, color, national origin, parental/marital
status, pregnancy, childbirth, or medical
conditions related to pregnancy or childbirth,
religion/creed, social origin or condition, genetic
information, sex, sexual orientation, gender
identification or expression, ancestry, age,
disability mental or physical, political or religious
affiliations or ideas, military service or veteran
status, vaccination status or possession of
immunity passport

For the duration of this contract/agreement, the PARTY agrees as follows:

(1) Compliance with Regulations: The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Non-discrimination:

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. The PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. A statement that the PARTY does not discriminate on the grounds of any protected classes.
 - ii. A statement that the PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
 - iii. Contact information for the PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
 - iv. Information on how to request information in alternative accessible formats.
- c. In accordance with Mont. Code Ann. § 49-3-207, the PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of

merit and qualifications and that the PARTY does not discriminate on the grounds of any protected class.

(3) Participation by Disadvantaged Business Enterprises (DBEs):

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml
- b. By signing this agreement, the PARTY assures MDT that:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

- c. The PARTY must include the above assurance in each contract/agreement the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(6) Sanctions for Noncompliance: In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

(7) Pertinent Non-Discrimination Authorities: During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

State

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

(8) Incorporation of Provisions: The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.

**AGREEMENT FOR MAINTENANCE OF
CITY PARKS 2023**

This Agreement is made this 31 day of ^{may}~~June~~, 2023, by and between the City of Lewistown, hereinafter referred to as the City, and Rick Sandoz hereinafter referred to as Contractor, and is meant to describe the terms and conditions of the parties in relation to maintenance and upkeep of the City's parks and other public properties. The term "Contractor" shall extend to Contractor's agents, employees and assignees.

For and in consideration of the mutual covenants contained herein, the City agrees to pay to the Contractor, the sum of \$50,000, for the period beginning July 1, 2023 and ending June 30, 2024 in return for the maintenance and upkeep activities described herein. This Agreement shall be renewed under the same terms and conditions for up to two additional one-year terms except as provided in paragraphs 3 and 9 herein. If the contract is renewed for the year 2024-2025 the contract amount shall be the sum of \$51,000. If the contract is renewed for the period 2025-2026, the contract amount shall be \$52,000.

1. Maintenance activities: The Contractor agrees to perform the following maintenance activities on the property described herein:

- a) The Contractor shall mow or cut the grass on the property at least

once every seven (7) days, provided that weather conditions permit. However, in any event, the grass shall be cut or mowed at least once every ten (10) days.

The parties may modify the requirements contained in this paragraph due to unusual weather conditions or due to a need or lack of need, for mowing during particular times.

The City of Lewistown through the Park and Recreation Director reserves the right to modify or change the mowing schedule on occasion, by request.

b) At the time the grass is mowed or cut on any of the property, the Contractor shall trim the grass around all trees, buildings, curbs, fences, or other structures or fixtures; it being the intention of the parties that each time the grass is mowed or cut, trimming take place at the same time.

c) The Contractor shall water or sprinkle the property on an as-needed basis, unless watering restrictions are instituted by the City.

d) All litter, trash, or other garbage shall be picked up on an as-needed basis and placed in garbage receptacle at Civic Center. The City shall then be responsible for disposal. The City may add up to six (6) additional garbage receptacles to those now in place during the term of this agreement.

e) At least three (3) times during each growing season, the Contractor shall trim and maintain all hedges and shrubs located on the property, so they remain three (3) feet tall where it presents a traffic hazard or public nuisance, and all cut branches or other plant material shall be treated as litter and transported to where directed by the City Public Works Department. All trimming or pruning

shall be done in a manner consistent with good practice.

f) The Contractor shall remove and bag all accumulations of dead leaves, branches, or other plant material from around buildings, in parks, or against fences or other structures. Such shall be bagged and transported to where directed by the City Public Works Department and disposed of by the City.

g) The Contractor shall provide general maintenance and repair to existing City property including but not limited to playground equipment, above/below ground sprinkling systems; repair of fences; repair/replacement of window covers in the warming house at Frank Day Park; winterizing of sprinkler systems; planting of replacement trees and watering newly planted trees as needed; repairing damage caused by vandalism; filling in holes with dirt when necessary. The Contractor shall not be responsible for the cost of materials/supplies required for necessary repairs to City property.

h) The Contractor shall, whenever possible, mow lines for soccer field boundaries, and mow the legion ball field within 2 days of scheduled games.

2. Maintenance activities/special conditions: The following conditions shall apply to the maintenance activities described herein:

a) All maintenance activities shall be performed at times which do not conflict or interfere with park or other recreational activities and which minimize any impact on public uses. In this regard, it is anticipated that watering will occur primarily between the hours of 9:00 p.m. and 8:00 a.m.

b) Maintenance activities will not be performed during the winter season

or at other times when snow is present.

c) The exact boundaries of the property to be maintained will be designated by the City's Department of Park and Recreation.

d) Maintenance activities at Hanson Creek Dam, Robinson Park and Frog Pond Park will be limited to litter pick up and garbage removal. Maintenance activities at East Fork Dam will be limited to litter pick up, garbage removal and cleaning of the public rest-room facilities. All supplies and extraordinary maintenance of such rest-room facilities shall be the responsibility of the City. Maintenance at the Mill Ditch Canal will consist of mowing at least two times each season.

e) Any supplies or materials required for necessary maintenance, not the responsibility of the Contractor to obtain, shall be approved by the Park and Recreation Director before a purchase is made.

f) Contractor shall maintain all equipment in a safe condition and shall perform all maintenance activities in a manner so as to not endanger himself, his employees or any member of the public.

3. Term: This Agreement shall commence on July 1, 2023 and shall run through June 30, 2024. Thereafter, this agreement shall automatically renew for subsequent one (1) year periods under the terms, prices and conditions unless either party shall give the other party at least sixty (60) days written notice prior to June 30 of each year that it does not intend to renew the agreement. However, in no event shall this Agreement be renewed or extended beyond June 30, 2026.

4. Property: The following properties are to be maintained:

<u>Property</u>	<u>Area</u>
Frog Pond Park	35.0 acres (litter/garbage only)
Symmes Park	14.5 acres
Kiwanis Park	1.38 acres
Hawthorne Park/Paris Cleaners Property	1.7 acres
Jaycee Park	1.38 acres
School Park	1.38 acres
Frank Day Park	7.0 acres (includes skating rink)
Railroad Park	9,000 sq. feet
Old Post Office Park	15,000 sq. feet
Veterans Park	15,000 sq. feet
Creekside Park	19,000 sq. feet
Boulevard strips on Boulevard and Seventh Avenue	9,000 sq. feet
Water Tower Property	30,000 sq. feet
Fish Hatchery Park	4.0 Acres
Hanson Creek Dam	Litter/garbage only
East Fork Dam	Litter/garbage and toilets only
Robinson Park	Litter/garbage only
City Complex	Water, mow and trim lawn

I Decline
R.A.

(The areas listed are approximate)

5. Equipment: The Contractor will supply all equipment necessary to perform the activities described herein, to include all mowers, trimmers, and vehicles. In addition, Contractor will supply parts, gas, and oil for all such equipment. Contractor will also supply plastic bags for litter pick up activities.

The City will allow the Contractor use of its equipment for watering, however, any transportation and moving of such equipment shall be the responsibility of the Contractor. In addition, the Contractor will be allowed to use all fire hydrants or other fixtures of the City necessary for proper watering. The

Contractor shall not be responsible for payment of water or irrigation charges. At the commencement of this contract, the Park and Recreation Department will instruct the Contractor in use of such watering equipment and fixtures. Contractor shall not commence usage of fire hydrants or other city fixtures without advance instruction.

The Contractor will be responsible for protecting the City's equipment from damage or misuse.

6. Insurance: The Contractor shall provide and maintain liability insurance to protect against loss or injury to property and persons. Such coverage shall insure Contractor in an amount of at least \$1,000,000.00, and shall be on terms and conditions to be approved by the City.

7. Independent Contractor Status: It is clearly understood and agreed that the Contractor has the status of an independent contractor and not the status of an employee for the City of Lewistown. In this regard, the Contractor shall be obligated to carry Workers' Compensation Insurance for himself or herself and for all of his or her employees to the extent required by state law. Proof of such coverage or authorized exemption therefrom shall be provided to the City prior to commencement of any work under this agreement.

The Contractor is expected to abide by and comply with all laws of the Federal Government, the State of Montana, and the City of Lewistown in regard to such status, to include the requirement to obtain a City business license.

If the Contractor intends to hire employees to perform any of the

maintenance activities described herein, such employees shall be paid at rates prescribed by the Montana Department of Labor.

Contractor shall provide the City with a list of all of Contractor's employees who may perform any work under this agreement.

8. Timing of Payments: The Contractor shall be paid in such intervals as negotiated by the parties. The Contractor shall be responsible for initiating such requests in a manner consistent with City accounting practices. Payment requests shall be approved, provided the Contractor has not breached this Agreement.

9. Default: Time is of the essence of this Agreement. Should the Contractor fail to abide by the terms and conditions contained herein, the City may consider such failure a default and provide written notice thereof. Such written notice shall specify the nature of the Contractor's failure of performance, and the Contractor shall have fifteen (15) days in which to cure the specified default. If the Contractor cures such default, this contract shall remain in full force and effect, otherwise the City may, without further notice, terminate this Agreement and the Contractor shall have no further rights herein. The remedy of termination shall be in addition to any remedy allowable at law or equity, and may include an action for damages or an action upon the performance bond.

Although the term of this Agreement is a period of one (1) year (and renewable for up to two additional one year terms), the City reserves the right to unilaterally terminate this Agreement upon giving of thirty (30) days written notice

in the event that funding for the maintenance services provided herein becomes unavailable. Unavailability of funding is in the sole discretion of the City Commission. In the event this Agreement is terminated early, Contractor shall be entitled to receive a pro-rated payment through the date of termination based upon the number of months performed under the contract.

10. Employee Requirements: Contractor shall not allow any employee or agent of Contractor who is a registered sexual or violent offender to perform any work under this agreement. It shall be Contractor's responsibility to verify this requirement. The link to the Montana Department of Justice Sexual or Violent Offender Registry can be accessed at: <https://app.doj.mt.gov/apps/svow/default.aspx>. Failure to abide by this requirement may result in immediate termination of this agreement.

11. Care of Public Property: The Contractor shall perform the maintenance activities in a good and workmanlike manner and shall not willfully or negligently abuse or damage the property or fixtures located thereon. The Contractor shall take special care in mowing and trimming around young trees. The Contractor shall be liable upon his performance bond, or by any other allowable remedy, for damage caused to the property or its fixtures as a result of Contractor's negligent or willful acts.

12. Indemnification and Release: The Contractor shall indemnify, hold harmless, and release the City from all claims, losses or damages occasioned by any act or omission of the Contractor or Contractor's employees or agents.

13. Communication/Amendments: The Contractor will communicate frequently with the City's Department of Park and Recreation for the purpose of coordinating all maintenance activities. From time to time, specific questions may arise about the responsibility for a particular task on the property, or whether or not a particular task is the responsibility of the City or the Contractor. These questions will be resolved in discussions between the Contractor and the City of Lewistown, and such will be reduced to writing and shall become amendments to this contract. Such amendments will be signed by the Contractor and the City Manager of the City; however, no such amendment or modification shall increase the contract price without authorization from the City Commission.

14. It is understood the Contractor and his employees will abide by City policies pertaining to dress and conduct while operating on any city property or conducting city business under this agreement. Contractor shall familiarize himself with such city policies. Such conduct shall include the requirement to maintain a proper, presentable appearance and be courteous to the public in a manner consistent with City practices. Prohibited attire includes, but is not limited to, tank tops, swimming suits, shirts with offensive or vulgar wording/pictures and cut-offs. Profane or abusive language or otherwise discourteous behavior toward or around the public will not be tolerated. Violation of this section shall be grounds for immediate termination of this contract. All comments and complaints will be channeled through the Park and Recreation Director and addressed with Contractor.

DATED this ____ day of June, 2023.

City Manager, City of Lewistown

ATTEST:

City Clerk

Contractor