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June 18, 2024

Hi Rebecca:

I will not be signing the contract that City Parks sent in April. When I responded to the initial contract in December 2023, I had two concerns to be addressed through revision of the contract terms: 1) since my crew would be coming from out of town, we needed the city to handle permitting and marking underground utilities prior to our arrival, and 2) since the city reserved the right to delay the project for any reason, suspending the work for unspecified periods of time, and calling for changes in scope that might result in delays, it was clear that the schedule was beyond our control. Under those circumstances, I am unable to assume the penalties the contract specified for failing to resume work promptly after a suspension, or for finishing beyond the scheduled deadline. These provisions don't appear in the RFP, and I did not budget for the City changing the terms during the contracting process.

With respect to the first concern, the handling of permitting and inspections, there were no revisions in the second version of the contract addressing permitting. When I investigated the permitting process in Helena, I found out that the City, as the owner of the fire tower, can apply for and obtain a permit for its repair. The initial contract also outlined a process for the City to assume responsibility for the location of underground utilities, signaling that this is an arrangement the City sometimes uses. This option was omitted in the revised contract, so that rather than making an accommodation on this issue, the revised contract was actually more restrictive. It is not clear to me why the City chose not to exercise this option to expedite the project schedule and complete the repairs within the proposed budget.

Regarding the second concern, contract provisions that assign to the City so much control of the schedule with no accompanying responsibility for the delays resulting from City decisions, the revised contract is also arguably worse than the first draft. In the first meeting I had with you in February (2/5/24), I explained that delays by the City will result in a loss of their position in line; because our schedule is booked months ahead, it can take months to find an opening in which the work can be rescheduled. As a result, I said that I couldn't sign a contract allowing the City to decide unilaterally whether our return to work following a suspension can be considered "prompt" or levy late charges of \$1000/day. These provisions would result in additional financial risks that were not included in the RFP nor in the proposed budget.

During our second phone call (2/12/24), you asked me what sort of provision I would agree to that would help to guarantee that we would finish the work. I suggested retaining 5% of the project costs, to be paid in the final payment. That provision is in the revised contract, and the late charges of \$1000/day have been removed. In their place, the City substituted damages equal to 5% of the total project value. That change replaced one

penalty not included in the RFP with another not in the RFP. Under the provisions of the first contract, if we finished the project on Nov 1, 2024 (one day late) Porter & Associates would owe the City \$1000; under the provisions of the revised contract, Porter & Associates would owe the City \$12,752.

There's another provision in the revised contract I need to point out. In January, Craig expressed a concern with my plan to make the repairs to the fire tower in two visits. Nothing in the RFP discouraged us from considering this option, and I think it can be regarded as a means and methods issue, a decision for the contractor to make. It also seemed in that meeting that working offsite in a secure area might eliminate a lot of Craig's concerns. In our second call, we discussed using a space that Pam Attardo offered in the Trolley Shop. By the third call (2/21/24), City Parks had decided that the only way to guarantee the security of the fire tower timber was to provide a city-owned facility for temporary use as a framing shop. The revised contract specifically allows for the use of a city-owned facility, *but it makes Porter & Associates responsible for the costs of transportation to and from the facility, and fully and solely liable for any loss or damage to the fire tower at the city-owned facility.* These requirements were not in the RFP and the costs were not included in my budget.

During our second meeting, you asked me whether I thought it was still possible to finish the repair of the fire tower in 2024. I told you that to do that, I would need to be under contract **no later than April 20, 2024**, and described the other commitments I had on my calendar this spring. These included work on remote sites in Death Valley and Guatemala beginning March 25 and running into May. I said I thought it was critical to complete our revisions, put bonds in place, and sign a contract before my departure on March 25. You promised a revised draft for my review on February 21.

Due to unknown delays on the part of the City, the revised contract wasn't ready for our call on 2/21, but you promised it no later than 2/23. I expressed again that without substantial progress on the contract before April that we would have a difficult time scheduling a project for 2024. In fact, the revised contract didn't come in February, or in March. On March 25, I communicated my concerns (in writing) to Doug Smith that we would be unable to review a revised contract before May, making it unlikely that we could still repair the fire tower in 2024. I spoke with Doug later that afternoon, repeating that I was going to be working in remote sites without cell/internet coverage until May and unavailable for another meeting before returning home.

I returned home from project work May 12 to find that Craig Marr sent a revised contract on April 1 (five days too late for me to receive it), and that in an article on the fire tower in a Helena newspaper, the acting City Manager blamed the lack of progress on fire tower repairs on me. Nothing could be further from the truth. The arson occurred in 2015. City Parks proposed demolition and only arranged to get an outside opinion on repair feasibility after a public outcry. It took them until 2019 to arrange for that assessment, which resulted in a plan for repair. City Parks issued an RFP for a repair project in 2023, and then failed to award a contract in time for conducting the project that year. They rescheduled for May-June 2024 and then failed to draft a contract in time. The contract, when it did come, was full of stipulations and penalties that were not in the RFP and, therefore, not included in the budget. This required negotiations on the changes in terms that needed to be agreed upon before a contract could be signed. Then City Parks ran the clock out on those negotiations.

You say in your letter that City Parks negotiated in good faith; I disagree. The City added terms not in the RFP and delayed the entire contracting process. The revised contract does nothing to resolve my principal concerns, and in fact makes some of the penalties more egregious. I wonder why a) City Parks chose to exclude members of the Helena preservation community from our discussions and to keep the details of our negotiations secret; b) City Parks sent contract revisions on April 1, too late to complete our negotiations for a 2024 project, when on February 21 we were only two days from a revised contract, and; c) after sending the contract, City Parks left messages asking to schedule a follow-up meeting when they knew I wouldn't get the messages. All of this seems planned to allow City Parks to claim that they negotiated in good faith, provided the requested contract revisions, and blame the breakdown in our negotiations on my unresponsiveness.

What the stewards of the fire tower need to know is that opening the field to less qualified contractors is unlikely to result in the repairs that are currently needed. Based on the results of the 2019 assessment, the impacts of improperly designed and executed repair projects conducted by City Parks have had a detrimental impact on the fire tower. These include unsuccessful attempts to use sealants to prevent deterioration, accelerating the decay of the columns; and the incremental removal of traditional joinery and the substitution of bolted steel plates, so that currently none of the connections have sufficient capacity for a structure of this size. Repairing the tower will require knowledge and skills in the use of traditional timber framing tools, laying out and cutting traditional scarf joints in old and new timber, repair/replacement of decayed mortise-and-tenon joinery, and the use of special fasteners developed for timber construction. These skills are not typically found in residential or commercial contracting companies. Contracting with a company unprepared for this demanding work is unlikely to successfully preserve the fire tower that is a cornerstone of Helena's history.