



**AGENDA
CITY OF LAUREL
CITY COUNCIL WORKSHOP
TUESDAY, NOVEMBER 15, 2022
6:30 PM
COUNCIL CHAMBERS**

Public Input: *Citizens may address the Council regarding any item of City business that is not on tonight's agenda. The duration for an individual speaking under Public Input is limited to three minutes. While all comments are welcome, the Council will not take action on any item not on the agenda. If a citizen would like to speak or comment regarding an item that is on tonight's agenda, we ask that you wait until the agenda item is presented to the Council by the Mayor and the public is asked to comment by the Mayor. Once again, each speaker is limited to three minutes.*

Be advised, if a discussion item has an upcoming public hearing, we would request members of the public to reserve your comments until the public hearing. At the public hearing, the City Council will establish an official record that will include all of your comments, testimony and written evidence. The City Council will base its decision on the record created during the public hearing. Any comments provided tonight will not be included in the record or considered by the City Council.

General Items

1. Beartooth RC&D Presentation
2. Appointment of Rick Musson to the Police Commission for the remainder of a three-year term ending April 30, 2024.

Executive Review

3. Resolution - Resolution Approving A Memorandum Of Understanding By And Between The City Of Laurel And Beartooth Resource Conservation & Development Area, Inc.
4. Resolution - A Resolution Of The City Council Authorizing The Mayor To Execute An Independent Contractor Service Contract With True North Contracting
5. Resolution - Resolution Approving A Memorandum Of Understanding By And Between The City Of Laurel And The Montana Department Of Transportation For The Planning And Construction Of West Railroad Street.
6. Ordinance - An Ordinance Amending Section 14.04 Of The Laurel Municipal Code Relating To The Construction Board Of Appeals For The City Of Laurel

Council Issues

7. Closed Executive Session - Litigation Strategy

Other Items

Attendance at Upcoming Council Meeting

Announcements

The City makes reasonable accommodations for any known disability that may interfere with a person's ability to participate in this meeting. Persons needing accommodation must notify the City Clerk's Office to make needed arrangements. To make your request known, please call 406-628-7431, Ext. 2, or write to City Clerk, PO Box 10, Laurel, MT 59044, or present your request at City Hall, 115 West First Street, Laurel, Montana.

DATES TO REMEMBER

File Attachments for Item:

1. Beartooth RC&D Presentation



2022 City of Laurel Project Review November 15, 2022

Thank you for being a great partner as we work together to help the businesses and residents of our 5-county region! Here are some of the projects we have been working on in Yellowstone County and City of Laurel this year:

- Revolving Loan Fund
 - Ten loans in Yellowstone County totaling \$738,295.63.
 - Five loans in Laurel totaling \$278,235.40.
- SSBCI loan assistance program
- EDA Cares Act funding – grant conclusion 6/30/2022
 - Yellowstone Economic Response & Recovery
 - Included formation of the Economic Response & Recovery Team (ERRT), local expert trainings, business check-ins, and a Targeted Industry Study that led to the [Downtown Billings Housing Study](#)
 - Economic Resiliency & Tourism
 - Deb Brown’s visit in June, Bozeman Trail work
 - [Cushing Terrell Regional Housing Study](#)
 - [Cushing Terrell Regional Housing Study Presentation](#)
- Completion of [5-year CEDS](#) (Comprehensive Economic Development Strategy) document
- USDA LFPP (Local Food Producers Program) collaborative grant application
- Small Business / Community Assistance
 - 406 Bovine LLC
 - F Bar 3 Vineyard
 - Yellowstone Valley Farms
 - Laurel Rod & Gun Club

Stay Tuned for these projects in the works:

- Brownfields Community-wide Assessment Grant Application
 - Please alert us to any potential properties
- RMAP (Rural Microentrepreneur Assistance Program) Application

Opportunity to keep on your radar:

C-PACE (Commercial Property Assessed Capital Enhancement): <https://lastbestpace.com/>

Thank you again! Please refer to your digital copy of this to access hyperlinks. You can also find most info posted on our website at www.beartooth.org. Don't hesitate to reach out to us if you have questions or need our assistance.

Joel Bertolino, Executive Director/Food & Ag Director: jbertolino@beartooth.org

Jacy Head, Economic Development Direct: jhead@beartooth.org

Nan Knight, Finance Director: nknight@beartooth.org

Myrna Lastusky, Administrative Assistant: mlastusky@beartooth.org

Beartooth Office Phone: 406-962-3914

File Attachments for Item:

2. Appointment of Rick Musson to the Police Commission for the remainder of a three-year term ending April 30, 2024.

October 29, 2022

Mayor Dave Waggoner
City of Laurel, Montana

Rick Musson
617 7th Ave
Laurel Montana 59044

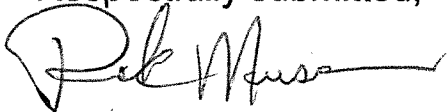
REF: City of Laurel Police Commission

Dear Mayor Waggoner,

This letter is my formal request to serve the City of Laurel as a POLICE COMMISSIONER.

I have lived in the City of Laurel for 44 years. My work for the City of Laurel started in 1982. I started working in the public works department for the City of Laurel on June 1, 1982. That fall, I joined the Laurel Police Reserves and on February 14, 1983, I was appointed as a police officer for Laurel Police Department. I worked 11 years as a patrol officer, 4 years as a Captain, and 20 years as the Chief of Police.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick Musson", with a stylized flourish at the end.

Rick Musson
Chief of Police (Retired)
City of Laurel

File Attachments for Item:

3. Resolution - Resolution Approving A Memorandum Of Understanding By And Between The City Of Laurel And Beartooth Resource Conservation & Development Area, Inc.

RESOLUTION NO. R22-_____

**RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING BY AND
BETWEEN THE CITY OF LAUREL AND BEARTOOTH RESOURCE
CONSERVATION & DEVELOPMENT AREA, INC.**

WHEREAS, the Beartooth Resource Conservation & Development Area, Inc. (hereinafter “the Beartooth RC&D”) has been formally recognized by the U.S. Department of Commerce, Economic Development Administration (hereinafter “EDA”) as a designated Economic Development District (hereinafter “EDD”), and as a District, the Beartooth RC&D has been awarded funding to carry out its Comprehensive Economic Development Strategy (hereinafter “CEDS”); and

WHEREAS, the City of Laurel, as a participating entity in the District, is required to execute a Memorandum of Understanding by and between the Beartooth RC&D and the Yellowstone County Commissioners, in cooperation with the City of Billings, the City of Laurel, and Big Sky EDA.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Laurel, Montana:

Section 1: Approval. The Memorandum of Understanding (hereinafter “the MOU”) by and between the City of Laurel and Beartooth Resource Conservation & Development Area, Inc., a copy attached hereto and incorporated herein, is hereby approved.

Section 2: Execution. The Mayor is hereby given authority to execute the MOU on behalf of the City.

Introduced at a regular meeting of the City Council on the _____ day of _____, 2022 by Council Member _____.

PASSED and APPROVED by the City Council of the City of Laurel, Montana on the _____ day of _____, 2022.

APPROVED by the Mayor on the _____ day of _____, 2022.

CITY OF LAUREL

Dave Waggoner, Mayor

ATTEST:

Kelly Strecker, Clerk-Treasurer

APPROVED AS TO FORM:

Michele L. Braukmann, Civil City Attorney

A
MEMORANDUM OF UNDERSTANDING
Between
Yellowstone County Commissioners, Big Sky Economic Development Authority,
City of Billings, City of Laurel
And
Beartooth Resource Conservation & Development Area, Inc.

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this ____ day of _____, 202__, by and between **Beartooth Resource Conservation & Development Area, Inc.**, whose principal business address is P.O. Box 180, Joliet, Montana 59041, hereinafter referred to as **“Beartooth RC&D”** and **Yellowstone County Commissioners (in cooperation with the City of Billings, City of Laurel, and Big Sky EDA)**, and hereinafter referred to as **“the Entity”**.

WHEREAS, The Beartooth RC&D has been formally recognized by the U.S. Department of Commerce, Economic Development Administration (EDA) as a designated Economic Development District (EDD), and as a District, the Beartooth RC&D has been awarded funding to carry out its Comprehensive Economic Development Strategy (CEDS). This funding will provide a staff person, administrative support and operating costs. This is a continual grant, renewable based on successful program operation and availability of federal funds. Local match is required.

WHEREAS, Each entity participating in the District will designate a representative and an alternate to the regional Beartooth RC&D Board. This individual will convey the needs and economic development goals of the community to the Beartooth RC&D board meetings. Regular board meetings will be held every two months to assess project status and evaluate regional economic development needs.

NOW THEREFORE IT IS UNDERSTOOD AS FOLLOWS:

ARTICLE 1: SCOPE OF WORK:

Beartooth RC&D employs an Economic Development Director to assist in the completion of the Comprehensive Economic Development Strategy for the five county region. The Director’s time will be allocated consistent with the goals in the CEDS by the Beartooth RC&D board of directors. The board is composed of one representative and an alternate from business partners, county and local elected officials and local economic development partners from our five county region. Input from this board is essential for meeting the needs of the communities in our region.

Priority will be assigned projects of regional scope or projects with strong local leadership. Grant funding for this position is from EDA, therefore, emphasis will be on regional economic development planning and projects which have a correlation to job creation, economic diversification and increased tax base. Matching funds are from participating entities and emphasis will be placed on their specified projects.

Annual Evaluation:

The performance of the Economic Development District will be evaluated annually by local entities participating on the regional Beartooth RC&D Board. Progress and/or accomplishments on each program/project will be reported and evaluated to ensure resources are being utilized in the most effective and efficient manner possible. Annual Comprehensive Economic Development Strategy updates and an annual plan of work will be developed with input from the Beartooth RC&D staff and board. Annual reports on projects and economic development activities will be provided to the board and participating entities along with the renewal of the Memorandum of Understanding.

ARTICLE 2: PERIOD OF PERFORMANCE:

The term of this Memorandum of Understanding shall be from the date it is signed through **December 31, 2023**, unless extended by mutual agreement by both parties. Such extension must be in writing, signed by authorized representatives of both parties, and made a part of the original Memorandum of Understanding by modification reference. This Memorandum of Understanding supersedes the prior Memorandum for participation in the Economic Development District.

ARTICLE 3: PAYMENT:

The Entity's annual contribution will be **\$4,500.00** as a "Membership" fee plus a per capita assessment of **.19** cents per person. These funds will provide the necessary match to obtain the \$70,000.00 in federal funds. Entities who do not participate financially in the match requirement will not receive services from the Economic Development Coordinator. The calculated fee for **Yellowstone County** is **\$36,257.74**. This figure is a total of the **\$4,500.00** county fee plus **\$31,757.74** per capita formula using a population of **167,146 (x .19)** as per the 2021 Census data. Yellowstone County's full payment will be separated into a four-way payment system. Each entity within the county will pay a percentage (%) similar to the previous year. Big Sky EDA- 34% or **\$12,327.63**, City of Billings- 36% or **\$13,052.79**, City of Laurel- 6% or **\$2,175.46** and Yellowstone County- 24% or **\$8,701.86**.

Annually, the Beartooth RC&D/EDD staff will provide a comprehensive report of the past year's activity. A new Memorandum of Understanding will be prepared and a request for the following year's match submitted. Entities will be billed for match funds after January 1, 2023, for the current year's assessment.

Payment as provided in this section shall be full compensation for work performed, services rendered and for all materials, supplies, equipment, and incidentals necessary to complete the work.

ARTICLE 4: EXAMINATION OF RC&D RECORDS:

The Entity or its representatives shall have the right to examine any books, records, or other documents of the Beartooth RC&D, directly relating to costs when such costs are the basis of compensation hereunder.

ARTICLE 5: OWNERSHIP AND USE OF DOCUMENTS:

Reproducible copies of all documents and other materials produced by the Beartooth RC&D in connection with the services rendered under this memorandum of understanding shall be provided to the Entity for the Entity's use whether the project for which they are made is executed or not. The Beartooth RC&D shall be permitted to retain originals, including reproducible originals, of drawings and specifications for information, reference and use in connection with Beartooth RC&D endeavors.

ARTICLE 6: WARRANTY:

The Beartooth RC&D warrants that all services performed herein shall be performed using that degree of skill and care ordinarily exercised in and consistent with generally accepted practices for the nature of the services and shall conform to all requirements of this Memorandum of Understanding.

ARTICLE 7: SAFETY:

The Beartooth RC&D agrees to fully comply with the Occupational Safety and Health Act of 1970, all regulations issued there under and all state laws and regulations enacted and adopted pursuant thereto. The Beartooth RC&D shall take all necessary precautions in performing the services hereunder to prevent injury to persons or damage to property.

ARTICLE 8: CONFIDENTIALITY AND CONFLICTS OF INTEREST:

The Beartooth RC&D agrees to hold in strict confidence any proprietary or other data, findings, results, or recommendations deemed to be confidential by the Entity and obtained or developed by the Beartooth RC&D in connection with the work under this memorandum of understanding. The Beartooth RC&D warrants and agrees they do not and will not have any conflicts of interest regarding the performance of services hereunder.

ARTICLE 9: APPLICABLE LAW:

This Memorandum of Understanding shall be governed in all respects by the laws of the State of Montana. No changes, amendments or modifications of any of the terms and conditions hereof shall be valid unless agreed to in writing. Venue of any proceeding arising hereunder shall be the Twenty-second Judicial District.

ARTICLE 10: COMPLIANCE WITH LAWS:

The Beartooth RC&D shall in performing the services contemplated by this Memorandum of Understanding, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this Memorandum of Understanding.

ARTICLE 11: CHANGES:

The parties, by mutual agreement, may, at any time during the term of this Memorandum of Understanding and without invalidating the Memorandum of Understanding, make changes within the general scope of the Memorandum of Understanding. The Beartooth RC&D to perform such changed services. The Entity's priority list for project work within their county can be changed at any time. In such case, the District will be informed of this change at the Entity's earliest convenience.

ARTICLE 12: TERMINATION:

This Memorandum of Understanding may be terminated in whole or in part, in writing, by either party in the event of substantial failure by the other party to fulfill its obligations under this Memorandum of Understanding through no fault of the terminating party, provided that no termination may be effected unless the other party is given: (1) not less than ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

Upon such termination the Entity shall pay the Beartooth RC&D amounts due and unpaid for services rendered as of the effective date of termination, and the Beartooth RC&D shall provide to the Entity all materials, surveys, reports, data, and other information performed or prepared as of such date.

ARTICLE 13: INDEMNIFICATION:

The Beartooth RC&D agrees to and does hereby indemnify and save the Entity, its officers, officials and employees, harmless against and from:

1. Any and all claims and liabilities, including but not limited to costs, expenses, and attorney fees arising from injury to, or death of, persons (including claims and liabilities for care or loss of services in connection with any bodily injury or death) and including injuries, sickness, disease, or death to Beartooth RC&D employees occasioned by a negligent act, omission, or failure of the Beartooth RC&D;
2. Any and all claims and liabilities, including costs and expenses, for loss or destruction of or damage to any property belonging to the Beartooth RC&D or the Entity caused by a negligent act, omission, or failure of the Beartooth RC&D and;
3. Any fines, penalties, or other amounts assessed against the Entity by reason of the Beartooth RC&D failure to comply with all health, safety, and environmental laws and regulations applicable to the services; resulting directly or indirectly from, or occurring in the course of the Beartooth RC&D performance of the services. However, this indemnity shall not extend to claims

and liabilities for (i) injury or death to persons or (ii) loss of or damage to property to the extent that these claims and liabilities result directly from the Entity's negligence or willful misconduct.

ARTICLE 14: INSURANCE:

The Beartooth RC&D shall maintain and demonstrate the following types of insurance:

1. The Beartooth RC&D agrees that its employees and particularly the employees designated to work on this memorandum of understanding are covered by applicable Worker's Compensation provisions. The Beartooth RC&D further agrees that if the Entity should legally incur any costs whatsoever under the Worker's Compensation laws by reason of the Beartooth RC&D employees' injury or death while engaged in the contract work, the Beartooth RC&D will indemnify and hold harmless the Entity for such costs which the Entity may be legally be required to pay to employees of the Beartooth RC&D.

2. Comprehensive general liability insurance for bodily injury, death, or loss of or damage to property of third persons or other liability due to the negligent acts of the Beartooth RC&D in the minimum amounts of \$500,000 per occurrence and \$1,000,000 aggregate for personal injury; and \$500,000 per occurrence/aggregate for property damage. Proof of coverage as required by this section shall be delivered to the Entity within fifteen (15) days of execution of this Agreement.

3. Professional liability errors and omissions insurance in a minimum amount of \$100,000.00.

ARTICLE 15: NONDISCRIMINATION:

The Beartooth RC&D will not discriminate against any employee or applicant for employment relating to this project on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap or national origin. All hiring associated with any project shall be on the basis of merit and qualifications related to the requirements of the particular position being filled.

ARTICLE 16: INDEPENDENT CONTRATOR:

The Beartooth RC&D and the Entity agree that the Beartooth RC&D is an independent contractor with respect to the services provided pursuant to this Memorandum of Understanding. Nothing in this Memorandum of Understanding shall be considered to create the relationship of employer and employee between the parties hereto. Neither the Beartooth RC&D nor any employee of the Beartooth RC&D shall be entitled to any benefits accorded Entity's employees by virtue of the services provided under this Memorandum of Understanding. The Entity shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state Worker's Compensation program, nor shall the Entity be deemed in any way to assume the duties of an employer with respect to the Beartooth RC&D, or any employee of the Beartooth RC&D.

ARTICLE 17: ASSIGNMENT:

The Beartooth RC&D shall not sublet or assign any of the services covered by this Memorandum of Understanding without the express written consent of the Entity.

ARTICLE 18: NON-WAIVER:

Waiver by the City of any provision of this memorandum of understanding or any time limitation provided for in this memorandum of understanding shall not constitute a waiver of any other provision.

ARTICLE 19: NOTICES:

Any Notice to be served hereunder may be served upon the parties personally or served by certified mail, return receipt. Notice served by mail shall be deemed complete upon deposit of said notice in any United States Post Office, postage prepaid, directed to the party to be served, at the following addresses:

ENTITY: City of Laurel
 P.O. Box 10
 Laurel, MT 59044

RC&D: Beartooth RC&D
 P.O. Box 180
 Joliet, MT 59041

ARTICLE 20: INTEGRATED AGREEMENT:

This Memorandum of Understanding together with attachments or addenda represents the entire and integrated Agreement between the Entity and the Beartooth RC&D and supersedes all prior negotiations, representations, or agreements, written or oral. This Memorandum of Understanding may be amended only by written instrument signed by both the Entity and the Beartooth RC&D.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals to this Memorandum of Understanding the day and year in this instrument first above written.

CITY OF LAUREL

BEARTOOTH RC&D/EDD

Dave Waggoner
Mayor

Ryan VanBallegooyen
Chairman

ATTEST: _____

Date: _____

File Attachments for Item:

4. Resolution - A Resolution Of The City Council Authorizing The Mayor To Execute An Independent Contractor Service Contract With True North Contracting

RESOLUTION NO. R22-_____

**A RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE MAYOR TO
EXECUTE AN INDEPENDENT CONTRACTOR SERVICE CONTRACT WITH
TRUE NORTH CONTRACTING**

BE IT RESOLVED by the City Council of the City of Laurel, Montana,

Section 1: Approval. The Independent Contractor Service Contract by and between the City of Laurel and True North Contracting, a copy attached hereto and incorporated herein, is hereby approved.

Section 2: Execution. The Mayor is hereby given authority to execute the Independent Contractor Service Contract with True North Contracting on behalf of the City.

Introduced at a regular meeting of the City Council on the _____ day of November, 2022, by Council Member _____.

PASSED and APPROVED by the City Council of the City of Laurel the _____ day of November, 2022.

APPROVED by the Mayor the _____ day of November, 2022.

CITY OF LAUREL

Dave Waggoner, Mayor

ATTEST:

Kelly Strecker, Clerk-Treasurer

APPROVED AS TO FORM:

Michele L. Braukmann, Civil City Attorney

INDEPENDENT CONTRACTOR SERVICE CONTRACT

This Contract is made and entered into this 22nd day of November 2022, between the City of Laurel, a municipal corporation organized and existing under the laws of the State of Montana whose address is P.O. Box 10, Laurel, Montana 59044, hereinafter referred to as “City” and True North Contracting, a contractor licensed to conduct business in the State of Montana, whose address is 9431 Anglers Way Billings, MT 59101, hereinafter referred to as “Contractor”.

SECTION ONE DESCRIPTION OF SERVICES

A. Purpose. City shall hire Contractor as an independent contractor to perform for City the services described in the Bid dated October 23, 2022, attached hereto as Exhibit “A” and by this reference made part of this contract.

B. Effective Date. This contract is effective upon the date of its execution by both Parties. Contractor shall complete the services within 60 days of commencing work. The parties may extend the term of this contract in writing prior to its termination for good cause.

C. Scope of Work. Contractor shall perform his/her work and provide services in accordance with the specifications and requirements of this contract, any applicable Montana Public Work Standard(s) and Exhibit “A”.

SECTION TWO CONTRACT PRICE

Payment. City shall pay Contractor eleven thousand eight hundred and eight dollars and no cents (\$11,808.00) for the work described in Exhibit A. Any alteration or deviation from the described work that involves extra costs must be executed only upon written request by the City to Contractor and will become an extra charge over and above the contract amount. The parties must agree to extra payments or charges in writing. Prior to final payment, Contractor shall provide City with an invoice for all charges.

SECTION THREE CITY’S RESPONSIBILITIES

Upon completion of the contract and acceptance of the work, City shall pay Contractor the contract price, plus or minus any additions or deductions agreed upon between the parties in accordance with Sections one and two, if any.

SECTION FOUR CONTRACTOR’S WARRANTIES AND RESPONSIBILITIES

A. Independent Contractor Status. The parties agree that Contractor is an independent contractor for purposes of this contract and is not to be considered an employee of the City for any purpose hereunder. Contractor is not subject to the terms and provisions of the City’s personnel policies or handbook and shall not be considered a City employee for workers’ compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings, agreements or sub-

contracts in any dealings between Contractor and any third parties. The City is interested solely in the results of this contract. Contractor is solely responsible for all work and work product under this contract, including techniques, sequences, procedures, and means. Contractor shall supervise and direct the work to the best of his/her ability.

B. Wages and Employment. Contractor shall abide by all applicable State of Montana Rules, Regulations and/or Statutes in regards to prevailing wages and employment requirements. Contractor shall comply with the applicable requirements of the Workers' Compensation Act. Contractor shall maintain workers' compensation coverage for all members and employees of his/her business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA. Contractor understands that all contractors or subcontractors working on publicly funded projects are required to have withheld from earnings a license fee of one percent (1%) of the gross contract price if the gross contract price is Five Thousand Dollars (\$5,000) or more. This license fee is paid to the Montana Department of Revenue pursuant to Montana law.

C. Unless otherwise specified by the terms of this Agreement, all materials and equipment used by Contractor on the Construction Project shall be new and where not otherwise specified, of the most suitable grade for their intended uses.

D. All workmanship and materials shall be of a kind and nature acceptable to the City.

E. All equipment, materials, and labor provided to, on, or for the Contract must be free of defects and nonconformities in design, materials, and workmanship for a minimum period beginning with the commencement of the work and ending one (1) year from completion and final acceptance by the City. Upon receipt of City's written notice of a defective or nonconforming condition during the warranty period, Contractor shall take all actions, including redesign and replacement, to correct the defective or nonconforming condition within a time frame acceptable to the City and at no additional cost to the City. Contractor shall also, at its sole cost, perform any tests required by City to verify that such defective or nonconforming condition has been corrected. Contractor warrants the corrective action taken against defective and nonconforming conditions for a period of an additional one (1) year from the date of City's acceptance of the corrective action.

F. Contractor and its sureties are liable for the satisfaction and full performance of all warranties.

G. Contractor has examined the facilities and/or has made field examinations. Contractor has knowledge of the services or project sought under this Contract and he/she further understands the site conditions to be encountered during the performance of this Contract. Contractor has knowledge of the types and character of equipment necessary for the work, the types of materials needed and the sources of such materials, and the condition of the local labor market.

H. Contractor is responsible for the safety of the work and shall maintain all lights, guards, signs, temporary passages, or other protections necessary for that purpose at all times.

I. All work is performed at Contractor's risk, and Contractor shall promptly repair or replace all damage and loss at its sole cost and expense regardless of the reason or cause of the damage or loss; provided, however, should the damage or loss be caused by an intentional or negligent act of the City, the risk of such loss shall be placed on the City.

J. Contractor is responsible for any loss or damage to materials, tools, work product or other articles used or held for use in the completion or performance of the Contract.

K. Title to all work, work product, materials and equipment covered by any payment of Contractor's compensation by City, whether directly incorporated into the Contract or not, passes to City at the time of payment, free and clear of all liens and encumbrances.

SECTION FIVE INDEMNITY AND INSURANCE

Contractor shall indemnify, defend and save City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Contractor or its agents or employees.

SECTION SIX COMPLIANCE WITH LAWS

Contractor shall comply with all federal, state, local laws, ordinances, rules and regulations. Contractor shall either possess a City business license or shall purchase one, if a City Code requires a business license.

SECTION SEVEN NONDISCRIMINATION

Contractor agrees that any hiring of persons as a result of this contract must be on the basis of merit and qualification and further that Contractor shall not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability or national origin.

SECTION EIGHT DEFAULT

If either party fails to comply with any term or condition of this Contract at the time or in the manner provided for, the other party may, at its option, terminate this Contract and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law except for punitive damages. The Parties hereby waive their respective claims for punitive damages. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Contract.

SECTION NINE TERMINATION

Either party may terminate the contract for their convenience upon thirty days written notice sent postage prepaid, to the addresses provided herein.

SECTION TEN
GOVERNING LAW AND DISPUTE RESOLUTION

The Parties agree that the laws of the State of Montana govern this Contract. The Parties agree that venue is proper within the Courts of Yellowstone County, Montana. If a dispute arises, the Parties, through a representative(s) with full authority to settle a dispute, shall meet and attempt to negotiate a resolution of the dispute in good faith no later than ten business days after the dispute arises. If negotiations fail, the Parties may utilize a third party mediator and equally share the costs of the mediator or file suit.

SECTION ELEVEN
ATTORNEY FEES

If any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all sums that either is ordered to pay, a reasonable sum for the successful party's attorney's fees and all costs charges and expenses related to the action.

SECTION TWELVE
ENTIRE AGREEMENT

This contract and its referenced attachment and Exhibit A contain the entire agreement and understanding of the parties and supersede any and all prior negotiations or understandings relating to this project. This contract shall not be modified, amended, or changed in any respect except through a written document signed by each party's authorized respective agents.

SECTION THIRTEENTH
ASSIGNMENT OF RIGHTS

The rights of each party under this Contract are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

SECTION FOURTEEN
SEVERABILITY

Each provision, section, or subsection of this Contract shall stand separate and independent of every other. In the event that a court of competent jurisdiction shall find any provision, section, or subsection of this contract to be invalid, the remaining provisions, sections, and subsections of this contract shall remain in full force and effect.

SECTION FIFTEEN
PARAGRAPH HEADINGS

The titles to the paragraphs of this contract are solely for the convenience of the parties and shall not be used to explain, simplify, or aid in the interpretation of the provisions of this agreement.

SIGNED AND AGREED BY BOTH PARTIES ON THE 22nd DAY OF NOVEMBER 2022.

CITY OF LAUREL

CONTRACTOR

Dave Waggoner, Mayor

True North Contracting

ATTEST:

Employer Identification Number

Kelly Strecker, Clerk/Treasurer

9431 Anglers Way
Billings Mt 59101
jb.tnc@outlook.com
406-850-8745

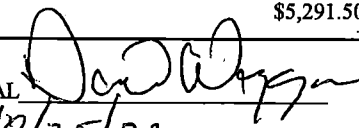


PROPOSAL

Date Estimate #
10/23/2022 9-160

TRUE NORTH CONTRACTING

City Of Laurel
P.O. Box 10
Laurel, MT
59044

Description	Total
8th and W Maryland Remove 1,400 sq ft of failed asphalt, compact subbase and pave back with new 3" thick asphalt	5,291.50
<div>1. Bid does not include price for bond or traffic control.</div> <div>2. The signing of this proposal will serve as a binding contract between True North Contracting LLC and signing party.</div> <div>3. Thank you for the opportunity to earn your business</div>	<div>Total \$5,291.50</div> <div>ACCEPTANCE OF PROPOSAL </div> <div>DATE OF ACCEPTANCE <u>10/25/22</u></div>

9431 Anglers Way
Billings Mt 59101
jb.tnc@outlook.com
406-850-8745



TRUE NORTH CONTRACTING

PROPOSAL

Date Estimate #
10/23/2022 9-161

City Of Laurel
P.O. Box 10
Laurel, MT
59044

Waste Water Plant

Description	Total
Remove 1,750 sq ft of broken asphalt, compact subbase and pave back with 3" thick new asphalt	6,516.50
1. Bid does not include price for bond or traffic control. 2. The signing of this proposal will serve as a binding contract between True North Contracting LLC and signing party. 3. Thank you for the opportunity to earn your business	Total \$6,516.50 ACCEPTANCE OF PROPOSAL <i>[Signature]</i> DATE OF ACCEPTANCE <u>10/25/22</u>

File Attachments for Item:

5. Resolution - Resolution Approving A Memorandum Of Understanding By And Between The City Of Laurel And The Montana Department Of Transportation For The Planning And Construction Of West Railroad Street.

RESOLUTION NO. R22-_____

RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF LAUREL AND THE MONTANA DEPARTMENT OF TRANSPORTATION FOR THE PLANNING AND CONSTRUCTION OF WEST RAILROAD STREET

WHEREAS, the City of Laurel and the Montana Department of Transportation (hereinafter “Montana DOT”) are working towards planning and development of the reconstruction of West Railroad Street, in the City of Laurel, from 1st Avenue North to 8th Avenue, with the Laurel Urban Area;

WHEREAS, the City and the Montana DOT have agreed upon a project that will involve the City of Laurel, West Railroad Street from the junction with 1st Avenue to the junction with 8th Avenue. The scope of work includes reconstruction work on West Railroad Street from the intersection of 1st Avenue to 8th Avenue. This includes one travel lane in each direction, new two-way left-turn lane, curb, gutter, sidewalks, and improvements to the existing roadway;

WHEREAS, the Montana DOT will be responsible for assuring that the planning, design, approvals and environmental clearances, construction, and maintenance of state and federally-designated highway system facilities provide for the benefit of the traveling public in a safe and efficient manner in accordance with Title 23 United States Code (U.S.C.) and related federal regulation and guidance and Title 60, Montana Code Annotated (MCA);

WHEREAS, the City of Laurel will be responsible for items identified in the attached Memorandum of Understanding (hereinafter “MOU”) and will be responsible for preparing the financial package for the project;

WHEREAS, the City and the Montana DOT believe that a cooperative delineation and identification of duties and responsibilities of the parties is essential to the overall development of the project; and

WHEREAS, the City and the Montana DOT have outlined all respective rights and responsibilities in the attached MOU.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Laurel, Montana:

Section 1: Approval. The Memorandum of Understanding by and between the City of Laurel and the Montana DOT, Inc., a copy attached hereto and incorporated herein, is hereby approved.

Section 2: Execution. The Mayor is hereby given authority to execute the MOU on behalf of the City.

Introduced at a regular meeting of the City Council on the _____ day of _____, 2022 by Council Member _____.

PASSED and APPROVED by the City Council of the City of Laurel, Montana on the _____ day of _____, 2022.

APPROVED by the Mayor on the _____ day of _____, 2022.

CITY OF LAUREL

Dave Waggoner, Mayor

ATTEST:

Kelly Strecker, Clerk-Treasurer

APPROVED AS TO FORM:

Michele L. Braukmann, Civil City Attorney

**MEMORANDUM OF AGREEMENT
BETWEEN CITY OF LAUREL AND THE MONTANA DEPARTMENT OF
TRANSPORTATION FOR THE PLANNING AND CONSTRUCTION OF
WEST RAILROAD STREET**

This memorandum of agreement (MOA) by and between CITY of Laurel, 115 W. 1st Street, Laurel, MT 59044 (CITY), and the Montana Department of Transportation, PO Box 201001, Helena, MT 59620-1001 (MDT) establishes the roles, responsibilities, and commitments relative to the planning, costs, and administration responsibilities necessary for the reconstruction of West Railroad Street from 1st Avenue to 8th Avenue within the Laurel Urban Area.

This PROJECT is in the city of Laurel on West Railroad Street (U-6902) from the junction with 1st Avenue (N-4) to the junction with 8th Avenue (L-56-419A). The scope of work includes reconstruction work on West Railroad Street from the intersection of 1st Avenue to 8th Avenue. This includes one travel lane in each direction, new two-way left-turn lane, curb, gutter, sidewalks, and improvements to the existing roadway.

WHEREAS, MDT is responsible for assuring that the planning, design, approvals and environmental clearances, construction, and maintenance of state and federally-designated highway system facilities provide for the benefit of the traveling public in a safe and efficient manner in accordance with Title 23 United States Code (U. S. C.) and related federal regulation and guidance and Title 60, Montana Code Annotated (MCA); and

WHEREAS, the CITY agrees to be responsible for items identified in this MOA and be responsible for preparing the financial package for the PROJECT; and

WHEREAS, the CITY agrees and understands that the PROJECT will not be programmed for the construction phase until a funding package for all improvements, including contingencies and overruns, is in place to MDT's satisfaction.; and

WHEREAS, the CITY agrees this PROJECT is and will remain the CITY's Urban Highway Program funding priority until constructed; and

WHEREAS, the current estimated cost for all phases of the PROJECT is approximately \$7,600,000¹ including indirect costs (IDC);

WHEREAS, it is mutually agreed upon that a cooperative delineation and identification of duties and responsibilities of the parties is essential to the overall development of this PROJECT.

NOW THEREFORE, the parties set forth below the fundamental duties and responsibilities necessary for this proposed PROJECT.

¹ Cost estimate based on preliminary estimates dated 11/2021, includes all phases, inflation, and IDC.

I. PROJECT DEVELOPMENT

A. MDT:

1. Will develop and let the PROJECT for construction including consultant management, administration, engineering analysis, surveying, design, public involvement, environmental documentation, clearances, plans preparation, acquisition of all appropriate permits, and the provisions of other services required to complete the preconstruction phase, right of way acquisition, and utility relocations in preparation to let and to construct the PROJECT.
2. Agrees all design will be in accordance with MDT's Project Development Procedures and Design Manuals and, where applicable, current MDT and AASHTO urban standards.
3. Agrees to collaborate with the CITY and the consultant on design specific details in all public involvement activities.

B. CITY:

1. Agrees to act as the PROJECT sponsor and will provide appropriate and timely input during the PROJECT's development. The CITY will issue local permits for applicable construction activities.
2. Acknowledges PROJECT design decisions and changes have potential to impact PROJECT schedule and fundability.
3. Agrees to participate and support MDT in public forums, present in collaboration with the consultant and MDT design specific details and PROJECT elements.
4. Agrees to update the local Transportation Coordinating Committee (TCC) regularly. Updates to include PROJECT status including PROJECT decisions affecting STPU funding.

II. ENVIRONMENTAL REVIEW

A. MDT:

1. Will be responsible for the development of documents necessary for compliance with the National Environmental Policy Act (NEPA), 23 CFR 771, Section 106 of the National Historic Preservation Act (NHPA), Section 4(f) of the DOT Act, and the Montana Environmental Policy Act (MEPA), in connection with the actions contemplated in this agreement. MDT will coordinate with FHWA for their approval of the NEPA document, as necessary.

B. All Parties:

1. Understand that the decisions made by MDT and FHWA pursuant hereto and the execution of this agreement do not constitute the irretrievable commitment of resources by MDT or the CITY until all necessary steps are taken with regard to any particular decision to comply with NEPA/MEPA and other applicable state and federal laws.

III. FUNDING

A. MDT:

1. Will bill the CITY for costs in excess of available federal funding or elements that are not federal-aid eligible prior to programming.

B. CITY:

1. Agrees to and acknowledges its responsibility for all costs associated with the PROJECT in excess of available STPU funds, for 100% of non-federal aid eligible costs, and payback of state and federal funds expended on the PROJECT if required.
2. Will provide any necessary local or non-federal match funds and associated indirect costs to MDT within thirty (30) days of billing. MDT will not submit programming requests to FHWA for individual PROJECT phases until the required matching funds and funds for costs in excess of available federal funds, if any, have been transferred to MDT.
3. Agrees, if the CITY actions cause MDT to terminate the PROJECT development at any time, it will reimburse MDT for any and all costs incurred by MDT, including any required payback of Federal funds already expended on the PROJECT, up to the date of the stoppage.
4. Agrees, if the CITY actions result in federal nonparticipation, it will reimburse MDT for any and all costs incurred by MDT, including any required payback of Federal funds already expended on the PROJECT related to all nonparticipation costs.
5. Will develop a comprehensive financial plan, for MDT review and approval, for the PROJECT. The financial plan must address sources of funds in the event of unanticipated cost overruns. This financial plan must be approved before MDT will request programming for the construction phase of the PROJECT.

C. All Parties:

1. Agree and understand Section 17-1-106 MCA requires any state agency, including MDT, which receives non-general funds to identify and recover its indirect costs. These costs are in addition to direct PROJECT costs. MDT's indirect cost rate is determined annually as a percentage of the PROJECT'S direct costs to cover the PROJECT'S share of MDT's indirect costs as defined by 2 CFR Part 200 Appendix VII. MDT's current indirect cost rate is 10.71% for fiscal year 2023 (July 1, 2022, to June 30, 2023).
For this PROJECT, MDT billings to the CITY will include a charge for the indirect costs at the current fiscal year indirect cost rate. This amount will be applied toward the total PROJECT contribution of the CITY, if this PROJECT extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the PROJECT.
2. Agree and understand the PROJECT will not be programmed for the construction phase until a funding package for all improvements, including contingencies and overruns, is in place to MDT's satisfaction.
3. Agree current PROJECT cost estimate for all phases is \$7,600,000, this includes IDC, contingency, and inflation to FFY26. Project costs will be assessed at final design. If at final design, the estimate exceeds the available STPU funds described in this Section, the CITY will have the option to modify PROJECT features to best fit the PROJECT needs and budget.

PROJECT funding sources include:

STPU funds FFY 2026 ² :	\$ 5,200,000
Local funding:	<u>\$ 2,500,000</u>
	\$ 7,700,000

4. Agree PROJECT estimates will be updated at PROJECT milestones or as more refined estimates become available until PROJECT closeout. All Parties will meet regularly during the PROJECT development process and during each phase to exchange PROJECT information, ensure PROJECT and funding are tracking together, and identify any outstanding issues.
5. Acknowledge PROJECT design details and changes have potential to impact PROJECT schedule and fundability. PROJECT cost increases above available funding will delay PROJECT delivery timeframes until a complete funding package has been secured.

IV. PROJECT DESIGN PHASE

A. MDT:

1. Will develop constructible design plans, in accordance with MDT design policies, practices, guidelines, and the environmental process for the PROJECT.
2. Will provide the CITY a design phase cost estimate including indirect costs to cover MDT administrative expenses and request for any non-federal match funds.

V. RIGHT-OF-WAY ACQUISITION

A. MDT:

1. Will request federal authorization to proceed with right-of-way acquisitions.
2. Will follow standard procedures to appraise, acquire and certify that all right-of-way donated or purchased for this PROJECT was acquired in accordance with all applicable federal and state laws and regulations required for federal funded projects such as 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition Regulation for Federally Assisted Programs, and the guidelines and procedures contained in MDT's Right of Way Manual.
3. Acknowledges that any right of way donated toward the PROJECT will reduce the overall PROJECT costs and be considered as participation in the PROJECT funding package, subject to limitations of federal/state match requirements, the right of way requirements of the PROJECT, and subject to FHWA approval.

B. CITY:

1. Acknowledges that, according to federal regulations, if right-of-way is donated to a PROJECT, the value of the right-of-way can only be credited

²Estimated Annual Allocations are subject to MDT Transportation Commission approval. Funding Projections are based on best available information and are subject to change given current funding uncertainties and unknown impacts of future congressional or other federal and state actions. Surface Transportation Program (STPU) funds available is dependent on the delivery year of the PROJECT.

after notification from MDT that FHWA authorization to proceed with right-of-way acquisition has been issued and is subject to the following provisions:

- a. Any right-of-way acquired or donated for the PROJECT must be procured in accordance with 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition Regulations for Federally Assisted Programs, and the guidelines and procedures contained in MDT's Right of Way Manual. Per MDT Policy Procedure 8.03.004.1, donated right of way for the PROJECT as in in-kind contribution can be used to reduce the overall PROJECT costs, not to match federal funds. Donated right of way will be valued by MDT as consistent with state and federal requirements.

C. All Parties:

1. Agree valuation of CITY's right of way acquired for the PROJECT will be determined by a qualified appraiser per MDT's discretion.

VI. UTILITIES

A. MDT:

1. Will inform the utility companies responsible for water, storm and sanitary sewer, power, gas, and phone of the future plans for the area and encourage the utility companies to make provision for any utility additions, adjustments, or replacement anticipated within 20 years after the estimated completion of the PROJECT.
2. Will prepare necessary utility agreements for facilities that must be moved because of conflicts with the proposed PROJECT.
3. Will follow standard procedures for utility relocations and will coordinate with the CITY.

VII. CONTRACT AWARD ADMINISTRATION

A. MDT:

1. Will provide a detailed breakdown of all estimated PROJECT costs and bill the CITY accordingly for local contributions as necessary to complete the funding package and bill the CITY in advance for construction of the PROJECT no more than (60) days before bid opening.
2. Bid, award, and administer the construction contract for the PROJECT, once a complete funding package is in place, in accordance with the standard MDT procedures, including obtaining concurrence of award from FHWA.
3. Will not award the PROJECT contract without the CITY's concurrence if the bid price exceeds the available funds or exceeds MDT's Project Award Guidelines.

B. CITY:

1. Will submit payment for its portion of PROJECT cost based on the MDT engineer's estimate for the construction and construction engineering costs to the MDT within thirty (30) days of billing.
2. Agrees if the federal government requires a reimbursement or return of any federal funds because a PROJECT doesn't advance due to CITY's failure to make any scheduled payment, the CITY will reimburse MDT for those federal funds within thirty (30) days of billing.

3. Agrees if at bid opening the CITY concurs with cost increases greater than MDT's Project Award Guidelines, the CITY will pay the increased costs in excess of available STPU funds within thirty (30) days of MDT's billing.
4. Agrees if at bid opening the CITY does not concur with cost increases greater than 10% of MDT's estimate, MDT will not award the PROJECT.
5. Agrees payments to this PROJECT will be coordinated through the MDT's Administration Division and will be provided to MDT staff in the form of a check to be deposited and credited to this PROJECT. Please make the check payable to the "Montana Department of Transportation" and send your payment to:

Montana Department of Transportation
Attention: Collections
P.O. Box 201001
Helena, MT 59620-1001

The contact for billing and accounting questions for the MDT will be:
Ben Ternes
Special Project Accountant
P.O. Box 201001
Helena, MT 59620-1001

The contact for billing and accounting questions for the CITY will be:
[ENTER NAME]
[ENTER TITLE]
115 West 1st St.
Laurel, MT 59044

C. All Parties:

1. Agree project costs will be assessed at final design. If at final design, the estimate exceeds the available STPU funds described in Section III, the CITY will have the option to modify PROJECT features to best fit the PROJECT needs and budget.
2. Understand it is possible that the PROJECT estimate may be exceeded once construction has begun. MDT will inform the CITY beforehand, and as early as possible, of anything that appears will result in a cost increase in excess of available STPU funds and will discuss the need for any possible change order with the CITY. It is agreed the CITY does not have the ability to veto or delay, or refuse to pay for, any change orders deemed necessary by MDT. Change orders, costs increase or unforeseen expenses in excess of available STPU funds will be borne by the CITY.
3. Agree the CITY's portion of the cost of any change order will be billed as early as it can be readily determined and will be due and payable by the CITY within thirty (30) days of the statement.
4. Agree within six (6) months after the PROJECT has been finally accepted with the final costs submitted, MDT will submit a final statement to the CITY. The final statement will be in the form of an invoice and provide details of any expenses that may be identified as "miscellaneous," billing the CITY for cost overruns, or it will be a check, for overpayment by the CITY. The CITY must

submit payment to MDT within thirty (30) days of billing. If payment is not made within that thirty (30) day period, interest on the unpaid amount will accrue at the rate of 10% per year and continue to accrue until paid in full. If the CITY is billed for additional funds, MDT will not participate in any future funding agreements with the CITY until full payment, including interest, is received from the CITY.

VIII. PROJECT CONSTRUCTION PHASE

A. MDT:

1. Will request programming of STPU funds and program local funds necessary to complete the funding package for the construction phase of the proposed PROJECT.

B. CITY:

1. Acknowledges the funding plan must demonstrate that all components of the PROJECT will be completed.
2. Acknowledges FHWA construction phase approval is contingent on an acceptable and comprehensive funding plan for the completed PROJECT.
3. Acknowledges the value of quantifiable materials and other MDT and FHWA approved in-kind contributions can also be credited to reduce overall PROJECT costs if all specifications are met and the transfer of ownership is accomplished after the PROJECT is programmed. No other contributions or services will be credited.

C. All Parties:

1. Agree and understand that MDT's funding contribution is contingent on the conditions described herein and therefore the PROJECT will not be programmed for the construction phase until:
 - a. a funding package for the PROJECT through construction, including contingencies and overruns, is in place to MDT's satisfaction; and
 - b. all approvals, clearances and permits are obtained.

IX. GENERAL TERMS AND CONDITIONS

1. **Term** – The term of this Agreement shall be ten (10) years. After the initial ten (10) year term, this Agreement will renew automatically, for successive one (1) year terms, unless superseded by a new Agreement between the parties.
2. **Termination** – This Agreement may be terminated by MDT if the CITY violates or breaches any term, condition, or article of this Agreement and the CITY has failed to correct (or reasonably initiate correction) within 60 days of receiving notice in writing addressed to the CITY's representative, of such violation or breach of any term, condition, or article of this Agreement.
3. **Other Agreements** – Other Agreements pertaining to the PROJECT area remain in full force and effect. In the case of a conflict between this Agreement and a previously executed Agreement, the terms of this Agreement apply.
4. **Hold Harmless & Indemnification**
 - a. 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.

- b. 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.

5. Insurance

- a. 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.
- b. 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.
- c. 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.
- d. 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.

6. Public Safety

- a. It is agreed, if any repairs to the elements of the PROJECT must be performed to address or prevent a public hazard, the CITY will immediately protect the area from public access, contact the appropriate MDT District

Maintenance Office, and make reasonable and timely effort to correct or repair the hazard.

7. Invoicing and Indirect Cost (IDC)

- a. If MDT incurs any costs resulting from this Agreement, MDT shall be entitled to be compensated for such costs by the CITY and the CITY shall pay the same within thirty (30) days of its receipt of such invoices.

Mont. Code Ann. §17-1-106, requires any state agency, including MDT, which receives non-general funds to identify and recover its indirect costs (IDC). These costs are in addition to direct PROJECT costs. MDT's IDC rate is determined annually as a percentage of the PROJECT'S direct costs to cover the PROJECT'S share of MDT's IDC as defined by 2 CFR Part 200, Appendix VII. MDT's current IDC rate is 10.71% for fiscal year 2023 (July 1, 2022, to June 30, 2023). If the work occurs or extends into fiscal year 2024 or beyond the IDC rate will be charged at the rate agreed to by MDT and the Federal Highway Administration (FHWA).

- i. Invoice will be sent to:

[ENTER NAME]
[ENTER TITLE]
115 West 1st St.
Laurel, MT 59044

- ii. Payments shall be made to:

Montana Department of Transportation
Attention: Collections
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

8. Choice of Law and Venue – This Agreement shall be governed by the laws of Montana. The parties agree that any litigation concerning this Agreement must be brought in the First Judicial District Court, in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees except as otherwise noted in this agreement. In case of conflict between the terms and conditions of this Agreement and the laws of the State of Montana, the laws of the State of Montana shall control.
9. Binding Effect -- The benefits and obligations set forth in this Agreement shall be binding upon, and inure to the benefit of, their respective successors, administrators and assigns of the Parties.
10. Relationship of Parties -- Nothing contained in this Agreement 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 the Parties.
11. Non-Discrimination – The CITY will require that during the performance of any work arising out of this Agreement the CITY, for itself, assignees, and successors shall comply with all applicable non-discrimination regulation set forth in Attachment "A" attached hereto and made part of this Agreement.

12. ADA - MDT requires that any construction resulting from this Agreement must include appropriate pedestrian facilities that meet or exceed current MDT policies and guidelines for accessibility as set forth by the United States Department of Justice 2010 ADA Standards for Accessibility Design, United States Access Board Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way (2011 PROWAG), and MDT's detailed drawings, 608 series.
13. Audit – The CITY grants to the Legislative Auditor and the Legislative Fiscal Analysts the right, without prior notice and during normal business hours, to audit, at their own costs and expense, all records, reports, and other documents, the CITY maintains in connection with this Agreement.
14. Utilities -- This Agreement is subject to the right of any private or public utility entity now lawfully occupying the right-of-way to continue to operate and maintain utility facilities thereupon. Copies of existing utility permits may be obtained from the MDT District Utility Agent.
15. Amendment and Modification -- This Agreement may be modified or amended only by written Addendum signed by the parties. In addition to the terms and conditions contained herein, the provisions of any Addendum may be incorporated and made a part hereof by this reference in the terms of the amendment so provided. In the event of any conflict between the terms and conditions hereof and the provisions of any Addendum, the provision of the Addendum shall control, unless the provisions thereof are prohibited by law.
16. Representatives
 - a. CITY's Representative: The CITY's Representative for this Agreement shall be the CITY Manager or designee or such other individual as CITY shall designate in writing. Whenever approval or authorization from or communication or submission to CITY is required by this Agreement, such communication or submission shall be directed to the CITY's Representative and approvals or authorizations shall be issued only by such Representative; provided, however, that in exigent circumstances when CITY's Representative is not available, MDT may direct its communication or submission to other designated CITY personnel or agents.
 - b. MDT's Representative: The MDT Representative for this Agreement shall be the District Administrator or Maintenance Chief or such other individual as MDT shall designate in writing. Whenever direction to or communication with MDT is required by this Agreement, such direction or communication shall be directed to MDT's Representative; provided, however, that in exigent circumstances when MDT's Representative is not available, CITY may direct its direction or communication or submission to other designated MDT personnel or agents.
17. 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.

CITY OF LAUREL

By: _____
City Manager

STATE OF MONTANA - DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
Montana Department of Transportation

Approved for Legal Content:

Approved for Civil Rights Content:

By: _____
MDT Legal Services

By: _____
Office of Civil Rights

DRAFT

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-dis crimination:

- 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:

Federal

- 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.

Exhibit B

MONTANA TRANSPORTATION COMMISSION POLICY STATEMENT

Adopted by the Montana Transportation Commission
during regular session on April 7, 1998 – Revised November 22, 2002
Policy Number _____06

URBAN HIGHWAY PROGRAM BORROW POLICY

Background

Each year the Transportation Commission allocates a portion of the Federal Aid Surface Transportation Program funds to the Urban Highway System. The annual allocation is used to fund construction projects on the designated urban highways in Montana's fifteen urban areas.

State statutes and past commission action have allowed urban areas to borrow against their anticipated Urban Highway Program funds. Recognizing that Urban Highway Program funds are apportioned solely on the basis of urban population and that the apportionments vary greatly among the fifteen urban areas, this policy seeks to better manage the program through setting understandable borrowing limits.

Policy

1. The projects must be on the State Urban Highway System as defined by the Montana Transportation Commission to be eligible for Urban Highway Program funds.
2. Each city (urban area) can borrow up to five years of its current year apportionment for the benefit of eligible projects but the total amount advanced cannot exceed one-half the total amount apportioned to the State Urban Highway Program.

File Attachments for Item:

6. Ordinance - An Ordinance Amending Section 14.04 Of The Laurel Municipal Code Relating To The Construction Board Of Appeals For The City Of Laurel

ORDINANCE NO. 022-_____

**AN ORDINANCE AMENDING SECTION 14.04 OF THE LAUREL MUNICIPAL
CODE RELATING TO THE CONSTRUCTION BOARD OF APPEALS FOR THE
CITY OF LAUREL**

WHEREAS, the City Council desires to keep the Laurel Municipal Code current by modifying and updating chapters, sections and subsections to address situations and problems within the City and to remain in accordance with Montana law; and

WHEREAS, City Staff prepared, reviewed, and approved the following amendments to the existing LMC § 14.04 *et al* as noted herein and hereby recommends the same to the City Council for their full approval.

~~Chapter 14.04 CONSTRUCTION BOARD OF APPEALS~~

~~14.04.010 Board created.~~

~~A. — There is created a board of appeals consisting of five qualified persons appointed by the mayor, who shall hold office for a two-year term.~~

~~B. — All board of appeals provided in any uniform code adopted by the city under this title or referenced elsewhere in this code, are replaced by the board described in subsection A of this section.~~

~~(Ord. 05-15 (part), 2005)~~

~~14.04.020 Duties.~~

~~The board of appeals shall:~~

~~A. — Hear, make findings and decide all appeals arising out of the enforcement of the codes;~~

~~B. — Adopt rules and regulations for conducting its investigations;~~

~~C. — Render all decisions and findings in writing to the enforcing officer of the particular code with a duplicate copy to the appellant;~~

~~D. — Recommend to the mayor such new legislation as is consistent with its findings and decisions;~~

~~E.——Notify the appellant that failure to comply with the board's decision within ten days or within a reasonable time set by the board, will result in the filing of a complaint in the city court to compel compliance;~~

~~F.——Limitations of Authority. The board of appeals shall have no authority relative to interpretation of the administrative provisions of this code nor shall the board be empowered to waive requirements of this code.~~

~~(Ord. 05-15 (part), 2005)~~

~~14.04.030 Ex officio members.~~

~~The official designated in the uniform code as an ex officio member of the board provided in said uniform code shall be an ex officio member of the board established under this title.~~

~~(Ord. 05-15 (part), 2005)~~

~~14.04.040 Failure to comply.~~

~~Once the board of appeals has made its decision, the appellant shall comply with such decision. Upon failure to comply, a complaint may be filed with the enforcing official in the city court.~~

~~(Ord. 05-15 (part), 2005)~~

This Ordinance shall become effective thirty (30) days after final passage by the City Council and approved by the Mayor.

Introduced and passed on first reading at a regular meeting of the City Council on the _____ day of _____, 2022, upon Motion by Council Member _____.

PASSED and ADOPTED by the Laurel City Council on second reading on the _____ day of _____, 2022, upon Motion by Council Member _____.

APPROVED BY THE MAYOR on the _____ day of _____, 2022.

CITY OF LAUREL

Dave Waggoner, Mayor

ATTEST:

Kelly Strecker, Clerk-Treasurer

APPROVED AS TO FORM:

Michele L. Braukmann, Civil City Attorney