

RESOLUTION NO. R16-104

**A RESOLUTION OF THE CITY COUNCIL AUTHORIZING
THE MAYOR TO SIGN A CONTRACT WITH J.L.D. CONCRETE
FOR THE REMOVAL AND REPLACEMENT OF SIDEWALKS
PURSUANT TO THE CITY'S RESIDENTIAL SIDEWALK
REPLACEMENT PROGRAM.**

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

Section 1: Approval. The Service Contract between the City of Laurel and J.L.D. Concrete for the Replacement of Sidewalks pursuant to the City's Residential Sidewalk Replacement Program, a copy attached hereto, is hereby approved for the amount of \$13,300.00.

Section 2: Execution. The Mayor and City Clerk of the City of Laurel are hereby given authority to execute said contract on behalf of the City.

Introduced at a regular meeting of the City Council on October 18, 2016, by Council Member Poehls.

PASSED and ADOPTED by the City Council of the City of Laurel, Montana, this 18th day of October, 2016.

APPROVED by the Mayor this 18th day of October, 2016.

CITY OF LAUREL



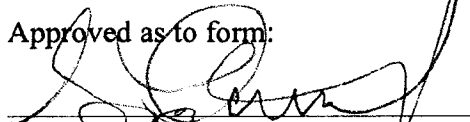
Mark A. Mace, Mayor

ATTEST:



Shirley Ewan, Clerk/Treasurer

Approved as to form:



Sam S. Painter, Civil City Attorney

INDEPENDENT CONTRACTOR SERVICE CONTRACT

This Contract is made and entered into this 18th day of October, 2016 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 J.L.D. Concrete, a contractor licensed to conduct business in the State of Montana, whose address is 1514 Ridge Drive, Laurel, Montana 59044, 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 Proposal 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 by August 1, 2017. 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 thirteen thousand three hundred dollars (\$13,300) 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

- A. 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.
- B. The City shall inspect and accept each sidewalk upon notification of the completion of the work by the contractor. The City must accept the sidewalk if the sidewalk meets the standards provided in Section One, Subsection C of this Contract.

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 used by Contractor on the Construction Project shall be new and where not otherwise specified, of the most suitable grade for their intended uses. All equipment used by the Contractor shall be maintained in a safe and operable condition.

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. Contractor shall obtain the necessary permits for the project.

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

A. 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.

B. For each calendar day the project is not completed as provided in Section One, the Contractor shall pay liquidated damages to the City in the amount of \$100 per day unless City approves and extension of the deadline in writing.

**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 THIRTEEN
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 18TH DAY OF OCTOBER, 2016.

CITY OF LAUREL

Mark A. Mace
Mark A. Mace

CONTRACTOR

Donald J. Fernald
J.L.D. Concrete

ATTEST:

Shirley Ewan
Shirley Ewan, Clerk/Treasurer

Employer Identification Number

Exhibit A

City of Laurel Residential Sidewalk Improvement Program

J.L.D. Concrete
1514 Ridge Drive
Laurel, Montana 59044

Address of Defective Sidewalk	Approximate Sidewalk Sq. Ft. to be replaced	Estimated sidewalk cost	ADA Corner required	Estimated total cost including ADA
717 E 5 th Street	425.00	\$3400.00	No	\$3400.00
603 5 th Avenue	350.00	\$2100.00	\$1600.00	\$3700.00
501 3 rd Avenue	800.00	\$4600.00	\$1600.00	\$6200.00
Total for project	-----	\$10,100.00	----- -	\$13,300.00

The ADA corners shall include the raised truncated domes/pads.

