

RESOLUTION NO. R24-61

A RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE MAYOR TO EXECUTE THE CONSULTANT AGREEMENT WITH PEAKS PLANNING AND CONSULTING LLC.

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

Section 1: Approval. The Consultant Agreement by and between the City of Laurel (hereinafter "the City") and Peaks Planning and Consulting LLC, for consulting services for a TIF District Coordinator, a copy attached hereto and incorporated herein, is hereby approved.

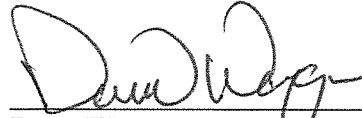
Section 2: Execution. The Mayor is hereby given authority to execute the Consultant Agreement with Peaks Planning and Consulting LLC on behalf of the City.

Introduced at a regular meeting of the City Council on the 13th day of August, 2024, by Council Member Wheeler.

PASSED and APPROVED by the City Council of the City of Laurel on the 13th day of August, 2024.

APPROVED by the Mayor on the 13th day of August, 2024.

CITY OF LAUREL



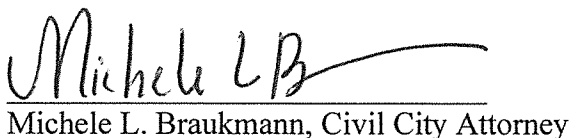
Dave Waggoner, Mayor

ATTEST:



Kelly Strecker, Clerk-Treasurer

APPROVED AS TO FORM:



Michele L. Braukmann, Civil City Attorney



**AGREEMENT
BETWEEN OWNER AND CONSULTANT
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective from August 13, 2024, to June 30, 2028 (“Effective Dates”) between the City of Laurel, Montana (“Owner”) and Peaks Planning and Consulting LLC (“Consultant”).

Owner’s Project, of which Consultant’s services under this Agreement are a part, is generally identified as follows: Tax Increment District (TIF) Coordinator (“Project”).

Consultant’s services under this Agreement are generally identified as follows: On-Call TIF Coordinator (“Services”).

Owner and Consultant further agree as follows:

1.01 Basic Agreement and Period of Service

- A. Consultant shall provide or furnish the Services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Consultant shall furnish services in addition to those set forth above (“Additional Services”).
- B. Consultant shall complete its Services within a reasonable period of time.
- C. If, through no fault of Consultant, such periods of time or dates are changed, or the orderly and continuous progress of Consultant’s Services is impaired, or Consultant’s Services are delayed or suspended, then the time for completion of Consultant’s Services, and the rates and amounts of Consultant’s compensation, shall be adjusted equitably.
- D. The Owner’s authorized representative is the Planning Director or his designee.

2.01 Payment Procedures

- A. *Invoices:* Consultant shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Consultant for Services, Additional Services, and expenses within 30 days after receipt of Consultant’s invoice, then (1) the amounts due Consultant will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and (2) in addition Consultant may, after giving seven days written notice to Owner, suspend Services under this Agreement until Consultant has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. Owner waives any and all claims against Consultant for any such suspension.
- B. *Payment:* As compensation for Consultant providing or furnishing Services and Additional Services, Owner shall pay Consultant as set forth in Paragraphs 2.01, 2.02 (Services), and 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Consultant in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

2.02 *Basis of Payment—Direct Labor, Plus Reimbursables*

- A. Owner shall pay Consultant for Services as follows:
 - 1. An amount equal to Consultant's Direct Labor Costs as outlined in Exhibit 'A' for services of Consultant's employees engaged in the Project, plus reimbursable expenses. Reimbursable expenses include accommodations, meals plus gratuity associated with work on the Project.
 - 2. Sub-consultants shall be reimbursed at the rate of 115% of actual invoiced costs including reimbursables. Consultant shall not use sub-consultants without prior authorization from Owner.
- B. The portion of the compensation amount billed monthly for Consultant's Services will be based upon Consultant's estimate of the percentage of the total Services actually completed during the billing period.

2.03 *Additional Services:* For Additional Services, Owner shall pay Consultant an amount equal to the cumulative hours charged in providing the Additional Services by each class of Consultant's employees and in accordance with Exhibit 'A'; plus reimbursement of expenses incurred in connection with providing the Additional Services and Consultant's consultants' charges, if any.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Consultant for its services is a substantial failure to perform and a basis for termination.
 - b. By Consultant:
 - 1) upon seven days written notice if Owner demands that Consultant furnish or perform services contrary to Consultant's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Consultant's Services are delayed for more than 90 days for reasons beyond Consultant's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 5.01.I.
 - c. Consultant shall have no liability to Owner on account of a termination for cause by Client.
 - d. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Consultant's receipt of written notice from Owner.

- B. In the event of any termination under Paragraph 3.01, Consultant will be entitled to invoice Owner and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, and Consultant's consultants' charges, if any.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Consultant are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Consultant (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Consultant) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Consultant to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Consultant and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional Consulting and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Consultant. Subject to the foregoing standard of care, Consultant and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Consultant or sub-consultants shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Consultant or sub-consultants have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Consultant or sub-consultants shall not be responsible for the acts or omissions of any Constructor.
- C. Consultant or sub-consultants neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.

- D. Consultant shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Consultant or its consultants.
- E. Owner shall have all rights and title to the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Consultant of full payment due and owing for all Services and Additional Services relating to preparation of the documents and subject to the following limitations:
 - 1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Consultant, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Consultant;
 - 2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by consultant, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Consultant or to its officers, directors, members, partners, agents, employees, and sub-consultants;
 - 3. such limited license to Owner shall not create any rights in third parties.
- F. Owner and Consultant may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- G. To the fullest extent permitted by law, Owner and Consultant (1) waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, and (2) agree that Consultant's total liability to Owner under this Agreement shall be limited to \$2,000,000 or the total amount of compensation received by Consultant, whichever is greater.
- H. Neither Party shall be considered to be in default of this Agreement if delays in or failure of performance are due to forces beyond the reasonable control of the nonperforming Party, the effect of which the nonperforming Party could not avoid by the exercise of reasonable diligence. Such forces include, but are not limited to: fire, acts of God, flood, earthquake, storm, lightning, tornados, epidemic, war, riot, civil disturbance, sabotage, strike, work slowdown, or other labor disturbances, judicial restraint, action or inaction of any Government entity in either its sovereign or contractual capacity, quarantine restrictions, freight embargoes, delays in long lead time items and severe weather. Any changes to the terms of this agreement impacted by a Force Majeure event shall be documented in an Amendment to the Agreement.
- I. The parties acknowledge that Consultant's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Consultant or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Consultant may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.
- J. Owner and Consultant agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the

dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

- K. This Agreement is to be governed by the law of the state in which the Project is located.
- L. Consultant's Services and Additional Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.
- M. Consultant shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Consultant and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

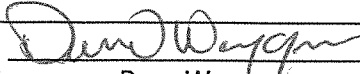
Definitions

- B. *Constructor*—Any person or entity (not including the Consultant, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- C. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.


Attachments: Scope of Work

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Dates of which is indicated on page 1.

Owner: City of Laurel, Montana

By: 
Print name: Dave Waggoner
Title: Mayor
Date Signed: 8-13-24

Consultant: Peaks Planning and Consulting, LLC

By: 
Print name: Forrest Sanderson
Title: President
Date Signed: 8/26/24

Address for Owner's receipt of notices:

City of Laurel
Attn: Kelly Strecker, Clerk/Treasurer
115 West 1st Street
Laurel MT 59044

Address for Consultant's receipt of notices:

Peaks Planning & Consulting LLC
P.O. Box 307
Roberts MT 59070

This is **EXHIBIT A**, consisting of [3] pages, referred to in and part of the **Agreement between Owner and Consultant for Professional Services** dated [August 13, 2024].

Consultant's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Consultant shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Planning Phase

A. Consultant shall, in accordance with Locally Adopted Rules and Regulations:

1. Tax Increment District Coordinator.
 - a. Advise and Assist the City authorities in the coordination of TIF programs, policies and activities; and
 - b. Serve as the primary liaison between the LURA Board and the Laurel City Council; and
 - c. Provide staff assistance to LURA; and
 - d. Provide assistance to parties interested in utilizing TIF funding to develop or improve commercial property within the TIF District; and
 - e. Assist in the negotiation of TIF Agreements on behalf of LURA; and
 - f. Monitor the implementation of TIF projects and agreements; and
 - g. Prepare the annual budget of the TIF Special Allocation Fund; and
 - h. Prepare the annual report of the TIF District as required by statute; and
 - i. Provide advice as needed to the City authorities on related financial matters, including but not limited to property tax levies, bonded indebtedness, utility rates, investment of funds, and budgeting. and
 - j. Other general duties as assigned by the LURA Board.
2. Other Planning Related Items as deemed appropriate by the LURA Board or Governing Body.
3. Prepare Staff Reports and Recommendations to the LURA Board and Governing Body.

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Consultant shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner.
1. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.
 2. Services required as a result of Owner's providing incomplete or incorrect Project information to Consultant.
 3. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
 4. Undertaking investigations and studies.
 5. Furnishing services of other Consultants for other than Basic Services.
 6. Services during out-of-town travel required of Consultant, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
 7. Assistance to Owner in training Owner's staff.
 8. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
 9. Overtime work requiring higher than regular rates.
 10. Providing more extensive services required to enable Consultant to issue notices or certifications requested by Owner.
 11. Other additional services performed or furnished by Consultant not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization

- A. Consultant shall advise Owner that Consultant is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Consultant need not request or obtain specific advance written authorization from Owner. Consultant shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
1. NONE.

Hourly Rate Schedule

Peaks Planning LLC

The below standard hourly rates are subject to review and adjustment annually as of June 30, 2025. Hourly rates for services effective July 1, 2024.

Principal Planner/Owner _____ \$165.00

Project Engineer _____ \$165.00*

Project Assistant _____ \$75.00

Sub-Consultant _____ Actual Cost Plus 15%

*Project Engineer (Doug Whitney MIC) is not a sub-consultant for the purposes of this agreement. All invoices for MIC will follow the Peaks Planning and Consulting format, protocols and standards for submittal to the City of Laurel.