

RESOLUTION NO. R14-43

**A RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE
MAYOR TO SIGN A CONTRACT WITH SANDERSON STEWART
FOR TRAFFIC ENGINEERING AND PLANNING SERVICES
FOR THE TAX INCREMENT FINANCING DISTRICT AREA.**

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

Section 1: Approval. The Contract between the City of Laurel and Sanderson Stewart to provide traffic engineering and planning services in the Laurel Tax Increment Financing (TIF) District, a copy attached hereto, is hereby approved.

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 July 15, 2014, by Council Member
Dickerson.

PASSED and ADOPTED by the City Council of the City of Laurel, Montana, this 15th
day of July, 2014.

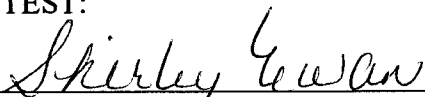
APPROVED by the Mayor this 15th day of July, 2014.

CITY OF LAUREL



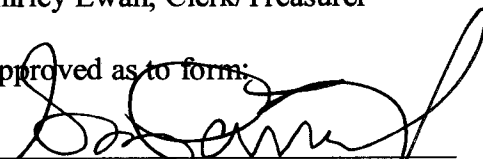
Mark A. Mace, Mayor

ATTEST:



Shirley Ewan, Clerk/Treasurer

Approved as to form:



Sam S. Painter, Civil City Attorney

July 1, 2014

Ms. Monica Plecker, City Planner
City of Laurel
P.O. Box 10
Laurel, MT 59044

Reference: Agreement for Traffic Engineering and Planning Services
Laurel Tax Increment Finance District Area, Laurel, Montana

Dear Ms. Plecker:

The following is a proposal for Sanderson Stewart to provide certain services in connection with your project, which is generally described as follows:

Traffic analysis and corridor planning for various streets and intersections located within the Laurel Tax Increment Finance District boundary in Laurel, Montana. The project will include S 1st Avenue, Washington Avenue, Bernhardt Road, SE 4th Street, E Railroad Street, and E Main Street. This project will also include an evaluation of available parking for seven blocks along Main Street and intersecting side streets to the north. It is anticipated that this project will supplement the Laurel Tax Increment Finance District Development Strategy Plan that is currently underway.

If this proposal is acceptable to you, please execute this agreement where noted. This agreement, along with the attached Terms and Conditions sets forth the terms of the contract between City of Laurel (hereinafter "Client") and Sanderson Stewart. The attached Terms and Conditions are expressly incorporated into and made part of the contract between Client and Sanderson Stewart.

Scope of Work

Sanderson Stewart will provide the following services as part of its basic services for this project:

1. Project Management and Coordination

This task will consist of Sanderson Stewart's general project management tasks, as well as meetings and coordination with the City of Laurel, if required.



1300 North Transtech Way
Billings, Montana 59102
Phone 406.656.5255
Fax 406.656.0967
www.sandersonstewart.com

2. Data Collection

This task will consist of new AM and PM peak hour traffic counts at the following intersections:

- SE 4th Street and Washington Avenue
- E Railroad Street and Washington Avenue
- E Railroad Street and Bernhardt Road
- E Main Street and N 1st Avenue
- 1st Street and 1st Avenue

This task will also include observation of site accesses and on-street parking areas along SE 4th Street and on-street parking areas for seven blocks along Main Street and intersecting side streets for one block north of Main Street. Parking occupancy data will be collected for up to four peak periods consisting of two hours each on one weekday and one weekend day.

3. Traffic Engineering Analysis and Corridor Planning

This task will consist of the following:

- Intersection capacity analysis
- Trip generation estimates for potential future area developments
- Evaluation of on-street parking demand and available capacity
- Evaluation of existing intersection configurations and potential two-way left-turn lanes
- Traffic safety evaluation of current access configurations
- Development of proposed corridor improvements, including turn lanes, changes to on-street parking, pedestrian crossings, and traffic calming features
- Development of recommendations and conclusions

4. Report and Graphics

This task consists of preparing the study report, which will summarize the study's methodology and conclusions. The report will include data and calculations summarized in an appendix, and it will also include a series of figures illustrating the overall site and vicinity, existing traffic volumes and recommended improvements.

Services not set forth above as basic services are specifically excluded from the scope of Sanderson Stewart's services. Sanderson Stewart assumes no responsibility to perform any services not specifically listed as basic services.

Additional services are not included in the basic services. If the Client and Sanderson Stewart agree in writing via an amendment to this agreement, Sanderson Stewart will provide additional services as requested by the Client.

Notwithstanding the foregoing, Sanderson Stewart shall have the right, but not the obligation, to provide, without advance authorization from the Client, other services made necessary by the default of the contractor or Client, or by deficiencies, delays, or defects in the work provided by the contractor. Sanderson Stewart shall provide written notice of the provision of such services as soon as reasonably possible.

Project Staff

The following Sanderson Stewart staff will be assigned to the project:

Principal-in-Charge:	Michael Sanderson, President/CEO
Project Manager:	Michael Sanderson, President/CEO
Additional Project Staff:	Joey Staszczuk, Project Engineer

Sanderson Stewart may, in its discretion, utilize other or different personnel on the project.

Project Schedule

Once Sanderson Stewart receives Client's authorization to proceed and Client pays the retainer detailed in the "Fees and Billing Arrangements" section, Sanderson Stewart shall prepare and submit to the Client a schedule for the performance of Sanderson Stewart's services. This schedule shall include reasonable allowances for review and approval times required by the Client, performance of services by the Client's consultants, and review and approval times required by public authorities having jurisdiction over the project. This schedule shall be equitably adjusted as the project progresses, allowing for changes in scope, character, or size of the project requested by the Client, or for delays or other causes beyond Sanderson Stewart's reasonable control.

The Client and Sanderson Stewart are aware that many factors outside Sanderson Stewart's control may affect Sanderson Stewart's ability to complete the services to be provided under this agreement. Sanderson Stewart will perform these services with reasonable diligence and expediency consistent with sound professional practices.

Fees and Billing Arrangements

Sanderson Stewart's fees for this project will be based on the following:

Basic Services:

Task	Fee
1. Project Management, Coordination, and Meetings	\$1,800.00
2. Data Collection and Site Observations	\$4,300.00
3. Traffic Engineering and Planning	\$8,500.00
4. <u>Report and Graphics</u>	<u>\$4,400.00</u>
Total	\$19,000.00

Invoice and Billing: Sanderson Stewart will bill for its services on a lump sum basis with a project total of **\$19,000.00**. Sanderson Stewart will begin work once this agreement has been executed by both parties and Client has paid a retainer in the amount of **\$5,000.00**.

Sanderson Stewart shall submit invoices to the Client for work accomplished during each calendar month. For services provided on a lump sum basis, the amount of each monthly invoice shall be determined on the "percentage of completion method" whereby Sanderson Stewart will estimate the percentage of the total work (provided on a lump sum basis) accomplished during the invoicing period. Monthly invoices shall include, separately listed, any charges for services for which time charges and/or unit costs shall apply. Such invoices shall also include, separately listed, any charges for consultants retained by Sanderson Stewart and reimbursable costs. Such invoices shall be submitted by Sanderson Stewart as soon as possible after the end of the month in which the work was accomplished and shall be due and payable by the Client upon receipt. The Client agrees that the monthly invoice from Sanderson Stewart is correct, conclusive, and binding on the Client unless the Client, within 20 working days from the date of receipt of such invoice, notifies Sanderson Stewart in writing of alleged inaccuracies, discrepancies, errors in the invoice, or the need for additional backup.

Entire Agreement: This agreement, including the attached Terms and Conditions incorporated into and made part of this contract, constitutes the entire agreement between Sanderson Stewart and Client. It supersedes all prior communications, understandings and agreements, whether oral or written. It shall become effective after being signed and dated by both parties; and, upon each page being initialed by Sanderson Stewart. Any amendment or modification to this contract must be written and executed by both Sanderson Stewart and Client.

Ms. Monica Plecker
July 1, 2014
Page 5

Conclusion

Ms. Plecker, we look forward to working with you on this very exciting project. Feel free to call me at 406/869-3315 if you have any questions regarding this proposal. Otherwise, if it meets your approval, simply mail or email this signed and dated agreement to me at our office address on page one or msanderson@sandersonstewart.com. Also, please mail the retainer to our office address. Thank you.

Sincerely,



Michael P. Sanderson, PE, PTOE, LEED AP
President/CEO

I hereby authorize SANDERSON STEWART to proceed as described above and, by my signature, acknowledge and agree to the Terms and Conditions attached to and made part of this contract. Moreover, an electronic or faxed copy of my signature shall be as effective as any original:

By Wanda Mae Mayor 7/15/2014
Client Title Date

By [Signature] PRESIDENT/CEO 7-10-14
Sanderson Stewart Title Date

MPS/hg

Enc.

P:902:Laurel_4th_Street_Prpsl_070114_SC



Initials

TERMS AND CONDITIONS

INTEREST, SUSPENSION, AND COLLECTION COSTS: Any invoice not paid within 30 days of date of invoice shall bear interest at 1.5 percent per month on the unpaid balance. If CLIENT fails to make payment within 45 days of the date of any invoice, SANDERSON STEWART shall have the right, but not the obligation, to suspend work and withhold deliverables until payment in full, including interest, is received. SANDERSON STEWART shall have no liability whatsoever to the CLIENT for any costs or damages as a result of such suspension. If SANDERSON STEWART resumes services after payment by CLIENT, the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for SANDERSON STEWART to resume performance.

If an invoice remains unpaid for more than 90 days, SANDERSON STEWART shall have the right, but not the obligation, to initiate collection procedures. If the CLIENT fails to make payment when due and SANDERSON STEWART incurs any costs in order to collect sums from the CLIENT, the CLIENT agrees that all such collection costs incurred shall immediately become due and payable to SANDERSON STEWART. Collection costs shall include, but are not limited to, legal fees, collection agency fees and expenses, court costs, collection bonds, and reasonable staff costs for SANDERSON STEWART's staff for time spent in efforts to collect. This obligation of CLIENT to pay SANDERSON STEWART's collection costs shall survive the term of this Agreement or any termination by either party.

It is understood and agreed that SANDERSON STEWART's services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, a Supplemental Agreement may be negotiated between the CLIENT and SANDERSON STEWART describing the services desired and providing a basis for compensation to SANDERSON STEWART.

TERMINATION OF SERVICES FOR NON-PAYMENT: If the CLIENT fails to make payment to SANDERSON STEWART in accordance with this Agreement, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by SANDERSON STEWART.

SET-OFFS, BACK CHARGES, AND DISCOUNTS: Payment of invoices shall not be subject to any discounts or set-offs by the CLIENT unless agreed to in writing by SANDERSON STEWART. Payment to SANDERSON STEWART for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.

INFORMATION PROVIDED BY CLIENT OR OTHERS: CLIENT agrees to provide to SANDERSON STEWART all available information necessary to perform duties as outlined in the attached scope of services. The CLIENT shall furnish, at CLIENT'S expense, all information, requirements, reports, data, surveys, and instructions required. SANDERSON STEWART is entitled to rely on the accuracy and completeness of all such information provided.

CLIENT shall furnish right-of-way entry onto the project site for SANDERSON STEWART to perform necessary field measurements or studies.

OWNERSHIP OF INSTRUMENTS OF SERVICE: All reports, drawings, specifications, computer files, field data, notes, and other documents and instruments prepared by SANDERSON STEWART as instruments of service shall remain the property of SANDERSON STEWART. SANDERSON STEWART retains all common law, statutory and other reserved rights, including the copyright to all instruments of service. If any instruments of service must be filed with governmental agencies, SANDERSON STEWART will furnish copies to the CLIENT upon request. The CLIENT will not reuse or modify the instruments of service without SANDERSON STEWART's prior written authorization. The CLIENT agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless SANDERSON STEWART, its officers, directors, employees, and agents, from and against any and all damages, claims, liabilities, costs, or suits, including reasonable attorney's fees and defense costs, arising from, allegedly arising from, or in any way connected with, the unauthorized reuse or modification of any instrument of service by any person or entity other than SANDERSON STEWART.

ELECTRONIC FILES: SANDERSON STEWART may furnish drawings, reports, or data on electronic media generated and furnished by SANDERSON STEWART. The CLIENT understands and agrees that all such electronic files are instruments of service of SANDERSON STEWART, that SANDERSON STEWART shall be deemed the author, and shall retain all common law, statutory law, and other rights, including copyrights. The CLIENT agrees not to reuse these electronic files, in whole or in part, for any other purpose other than for the project. The CLIENT agrees not to transfer these electronic files to others without the prior written consent of SANDERSON STEWART. The CLIENT further agrees to waive all claims against SANDERSON STEWART resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than SANDERSON STEWART.

The CLIENT is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by SANDERSON STEWART and electronic files, the signed or sealed hard-copy construction documents shall govern.

Additionally, the CLIENT agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless SANDERSON STEWART, its officers, directors, employees, and agents, against all damages, liabilities, claims, or suits, including reasonable attorney's fees and defense costs, arising from any changes made by anyone other than SANDERSON STEWART, or from any reuse of the electronic files without the prior written consent of SANDERSON STEWART.

Under no circumstances shall delivery of electronic files for use by the CLIENT be deemed a sale by SANDERSON STEWART; and SANDERSON STEWART makes no warranties, either express or implied, of merchantability or fitness for any particular purpose. SANDERSON STEWART shall not be liable for indirect or consequential damages as a result of the CLIENT's use or reuse of electronic files.

OPINIONS OF PROBABLE COST: CLIENT hereby acknowledges that SANDERSON STEWART cannot warrant that any opinions of probable cost provided by SANDERSON STEWART will not vary from actual costs incurred by the CLIENT. The CLIENT understands that SANDERSON STEWART has no control over the cost or availability of labor, equipment, materials, or over market conditions or the Contractor's method of pricing. SANDERSON STEWART makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from SANDERSON STEWART's opinion of probable cost.

LIMIT OF LIABILITY: In recognition of the relative risks and benefits of the project to both the CLIENT and SANDERSON STEWART, the risks have been allocated such that the CLIENT agrees to limit the liability of SANDERSON STEWART to the CLIENT for any and all claims, cause or

combination of causes, including attorney's fees, costs, and expert witness fees so that the total aggregate liability of SANDERSON STEWART to CLIENT shall not exceed \$50,000.00 or SANDERSON STEWART's total fees for services on this project, whichever is greater. It is intended that this limitation apply to any and all claims, liability or causes of action, however alleged or arising.

CONSTRUCTION SERVICES: If, under this Agreement, professional services are provided during the construction phase of the project, SANDERSON STEWART shall not be responsible for or have control over means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work; nor shall SANDERSON STEWART be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents or for the Contractor's failure to comply with the applicable laws, ordinances, rules, or regulations. These rights and responsibilities are solely those of the Contractor.

SANDERSON STEWART shall not be responsible for any acts or omissions of the Contractor, subcontractor, or any person or entity performing any portion of the work. SANDERSON STEWART does not guarantee or warrant the performance of any Contractor and shall not be responsible for the Contractor's failure to perform its work in accordance with the Contract Documents or any applicable codes, laws, rules or regulations.

JOB SITE SAFETY: Neither the professional activities of SANDERSON STEWART, nor the presence of SANDERSON STEWART at the construction/project site, shall relieve the general contractor and all subcontractors of any of their responsibilities and duties to perform the work in accordance with the contract documents and to comply with any health or safety precautions required by any regulatory agencies. SANDERSON STEWART does not have authority to control any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The CLIENT agrees that the contractor and subcontractors are solely responsible for job site safety and warrants that this intent shall be carried out in the CLIENT's contract with the general contractor. The CLIENT also agrees that CLIENT and SANDERSON STEWART shall be indemnified by the general contractor for any such claims, and shall be made additionally insured under the general contractor's insurance policies.

RECOMMENDATIONS BY SANDERSON STEWART: Sanderson Stewart may provide advice and/or recommendations to the CLIENT during Sanderson Stewart's provision of services for the CLIENT's project. If the CLIENT declines to follow the advice and/or recommendations provided by Sanderson Stewart, the CLIENT agrees that Sanderson Stewart shall not have any liability for adverse consequences or damages resulting from the CLIENT's failure to follow the advice and/or recommendations of Sanderson Stewart. Additionally, the parties agree that the CLIENT's failure to follow advice and/or recommendations of Sanderson Stewart may be cause for Sanderson Stewart to immediately terminate this Agreement at Sanderson Stewart's sole discretion.

PERMITTING: SANDERSON STEWART shall assist the CLIENT in applying for permits and approvals where required by law. In cases where the scope of services requires SANDERSON STEWART to submit, on behalf of the CLIENT, a permit application and/or approval by a third party to this contract, SANDERSON STEWART does not make any warranties, guarantees, or representations as to the success of SANDERSON STEWART's effort on behalf of the CLIENT. Payment for services rendered by SANDERSON STEWART is not contingent upon the successful acquisition of these permits.

NO ASSIGNMENT WITHOUT CONSENT: Neither party may assign this Agreement without the written agreement of the other party.

TERMINATION: In the event of termination of this Agreement by either party, the CLIENT shall, within 15 days of termination, pay SANDERSON STEWART for all services rendered and reimbursable costs incurred by SANDERSON STEWART up to the date of termination.

The CLIENT may terminate this Agreement for convenience and without cause upon 21 calendar days' written notice.

Either party may terminate this Agreement for cause upon 10 calendar days' written notice for the following reasons:

1. Substantial failure by either party to perform in accordance with this Agreement;
2. Assignment of this agreement without the written consent of the other party;
3. Suspension of the project or SANDERSON STEWART's services for more than 60 calendar days, consecutive or aggregate;
4. Material changes in the conditions under which this Agreement was executed, the Scope of Services, the nature of the project, or the failure of the parties to reach an agreement on compensation and/or schedule adjustments necessitated by such changes.

In the event of a termination not the fault of SANDERSON STEWART, the Client shall pay SANDERSON STEWART, in addition to payment for services rendered and reimbursable expenses incurred, all expenses incurred by SANDERSON STEWART in connection with the orderly termination of this Agreement, including, but not limited to, demobilization, reassignment of personnel, associated overhead costs, and all other expenses resulting from the termination.

CONSEQUENTIAL DAMAGES: Notwithstanding any other provision in this Agreement, neither the CLIENT nor SANDERSON STEWART, their respective officers, directors, shareholders, partners, employees, agents, members, subconsultants, or employees shall be liable to the other or shall make any claim for any incidental, indirect, or consequential damages arising out of or in any way connected to the project or this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, or any other consequential damages that either party may have incurred from any cause of action.

DISPUTE RESOLUTION, VENUE, AND CHOICE OF LAW: Any claim arising out of or related to this Agreement (except for Collection Procedures employed by SANDERSON STEWART and those waived or barred as provided elsewhere in this Agreement), shall be subject to mediation as a condition precedent to arbitration or to the institution of legal or equitable proceedings by either party. The parties shall endeavor to resolve their claims by mediation. Either party may file a request for mediation. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or by court order. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Billings, Montana. Any agreements reached in mediation shall be enforceable as settlement agreements by any court having jurisdiction.

Venue for any arbitration or litigation arising out of this Contract shall be in the Thirteenth Judicial District, Yellowstone County, Montana. This Agreement shall be governed by, and interpreted under, the law of the State of Montana.

ENTIRE AGREEMENT: This Agreement is the entire agreement between SANDERSON STEWART and CLIENT. It supersedes all prior communications, understandings, and agreements, whether oral or written. Any amendment or modification to this Agreement must be written and executed by both SANDERSON STEWART and CLIENT.