

**RESOLUTION NO. R14-50**

**A RESOLUTION OF THE CITY COUNCIL AUTHORIZING  
THE MAYOR TO SIGN A CONTRACT WITH BEARTOOTH RESOURCE,  
CONSERVATION, AND DEVELOPMENT AREA, INC. FOR  
PROVIDING ECONOMIC ASSISTANCE TO COMPLETE THE  
TAX INCREMENT FINANCE DISTRICT STRATEGIC MASTER PLAN.**

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

Section 1: Approval. The Contract between the City of Laurel and Beartooth CRDC to provide assist the City with the completion of a Tax Increment Finance District Strategic Master Plan, 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 August 19, 2014, by Council Member Mountsier.

PASSED and ADOPTED by the City Council of the City of Laurel, Montana, this 19<sup>th</sup> day of August, 2014.

APPROVED by the Mayor this 19<sup>th</sup> day of August, 2014.

CITY OF LAUREL

  
\_\_\_\_\_  
Mark A. Mace, Mayor

ATTEST:

  
\_\_\_\_\_  
Shirley Ewan, Clerk/Treasurer

Approved as to form:

  
\_\_\_\_\_  
Sam S. Painter, Civil City Attorney

**ASSISTED BUSINESS CONTRACT  
MONTANA DEPARTMENT OF COMMERCE  
BIG SKY ECONOMIC DEVELOPMENT TRUST FUND PROGRAM  
CATEGORY II: PLANNING PROJECTS**

This Contract is entered into this 5th day of August, 2014, by and between the Beartooth Resource, Conservation, and Development Area, Inc., herein referred to as the "CRDC" and the City of Laurel, PO Box 10, Laurel, MT, 59044, herein referred to as the "Assisted Business," Witnesseth:

WHEREAS, the Montana Department of Commerce, herein referred to as "the Department," has awarded the CRDC grant funds pursuant to Contract #MT-BSTF-2-14-15 for purposes of assisting the City of Laurel with the completion of a Tax Increment Finance District Strategic Master Plan and eligible administrative expenses in providing this assistance (the "Project"); and

WHEREAS, the Assisted Business desires the economic assistance of the Big Sky Trust Fund ("BSTF") and the CRDC to engage professional consultants ("Contractor") to render professional services related to the Project; and

WHEREAS, the Assisted Business will engage and pay the Contractor to complete the Project; and

WHEREAS, the CRDC desires to assist the Assisted Business to complete the Project by providing and administering BSTF grant funds; and

WHEREAS, pursuant to the terms and conditions herein, the CRDC will administer BSTF grant funds approved by the Department and reimburse the Assisted Business for amounts set forth herein and deemed eligible by the Department; and

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. **EMPLOYMENT OF CONTRACTOR AS CONDITION OF CONTRACT.** The Assisted Business agrees to engage the Contractor, by written agreement, to provide the professional services outlined in the Scope of Work attached as Exhibit A ("Project Contract"), all services provided by Sanderson and Stewart ("Contractor"). The Assisted Business shall provide CRDC a copy of the executed Project Contract.

The Assisted Business and CRDC acknowledge and understand that execution of the Project Contract for the provision of services outlined in Exhibit A is a condition that must be satisfied for this Contract to have any force and effect. In the event that the Project Contract is not executed, this Contract shall be null and void and neither the Assisted Business nor the CRDC shall have any rights or obligations hereunder.

2. **INDEPENDENT CONTRACTOR.** It is understood by the parties hereto that the Assisted Business is independent of the CRDC and that nothing contained in this Contract shall be interpreted to create a joint venture partnership between the CRDC and the Assisted Business.

3. **PAYMENT OF CONTRACTOR.** The Assisted Business is solely responsible for paying the Contractor for all professional services delivered under the Project Contract. Under no circumstances shall CRDC have any obligation to pay the Contractor for any services delivered to the Assisted Business.
4. **REIMBURSEMENT OF ELIGIBLE COSTS AND EXPENSES TO ASSISTED BUSINESS.** Subject to the Department's approval, the Assisted Business may be reimbursed for the costs and expenses of the Project, up to a maximum reimbursement of \$25,000 ("Reimbursable Award"). Regardless of the amount that the Assisted Business pays to the Contractors under the Project Contract, Assisted Business's reimbursement from the CRDC shall not exceed either: a) the Reimbursable Award, or b) 50% of the Assisted Business's costs and expenses up to \$25,000 paid to the Contractor under the Project Contract. Further, the CRDC will not be expected to pay the Assisted Business any funds other than amounts reimbursed by the Department pursuant to Contract #MT-BSTF-2-14-15.

Reimbursement of the Assisted Business's costs and expenses will be for 50% of each invoice remitted by the Contractor and paid by the Assisted Business. However, 20% of the Total Award amount, or up to \$5,000, will be withheld by the Department pending delivery of the Final Deliverable to the CRDC and the Department, and the Department's verification that CRDC and the Assisted Business have complied with their respective duties and obligations.

The CRDC shall prepare and complete Project Progress Reports in the submission of invoices and all Progress Reports required by Section 5.

The process for reimbursement of the Assisted Business's costs and expenses shall be as follows:

- a. The Assisted Business will request reimbursement from the CRDC by submitting the Contractor's detailed invoice for work completed on the Project.
- b. Within five business days of receiving a complete invoice, the CRDC will submit a Request for Payment to the Department.
- c. The CRDC will then reimburse the Assisted Business the full amount received from the Department for each invoice submitted.

The Assisted Business acknowledges and understands that reimbursement as described above is contingent and dependent upon proper and timely completion of the Project, timely submittal of Invoices, approval by the Department of all reimbursable payments, and compliance with all terms and conditions hereunder.

Further, the Assisted Business understands and acknowledges that the Department retains the discretion to withhold the final 20% of the Total award pending satisfaction of all reporting requirements and delivery of the Final Deliverable by the Contractor.

5. **CRDC'S ADMINISTRATIVE DUTIES.** In addition to CRDC's obligations set forth in Section 4, the CRDC shall have the following additional administrative duties:
- a. Establishing and maintaining complete and accurate project files and preparing all documentation and reports incidental to administration of the grant.
  - b. Upon request, reviewing proposed expenditures of the Assisted Business related to the Project to ensure their propriety and proper allocation under the Project budget.
  - c. Preparing and completing all required Invoice Progress Reports and Quarterly Progress Reports, and closeout documents for submittal to the Department, and assisting auditors with the completion of any Project audit requirements.
  - d. Attending the delivery or presentation of the Final Deliverable from the Contractor to the Assisted Business, if applicable.
  - e. Closing the Project in a timely fashion in accordance with the submitted Project timeline.
  - f. Reporting to the CRDC's Board of Directors on the progress of the Project and representing the CRDC at any public meeting deemed necessary by the CRDC's Board of Directors.
6. **ASSISTED BUSINESS'S REPORTING REQUIREMENTS.** In order to qualify for reimbursement of eligible costs and expenses, the Assisted Business must obtain detailed invoices from the Contractor and then comply with the following reporting requirements to the CRDC:
- a. **Detailed Invoices.** The Assisted Business shall obtain detailed invoices from the Contractor that states the work completed during the invoice period of work. These invoices shall describe the status of the activities set forth in Exhibit A including, at a minimum, the percentage completed, costs incurred, and funds remaining, and projected completion date.  
  
The invoice shall then be submitted by the Assisted Business to the CRDC.
  - b. **Final Deliverable.** The Assisted Business must submit a final copy of the Master Plan to the CRDC.  
  
The reimbursement of the Assisted Business's eligible costs and expenses under the BSTF grant program and under this Contract are dependent upon the Assisted Business complying with its reporting requirements. Failure by the Assisted Business to obtain Detailed Invoices from the Contractor and to submit the Final Deliverable to the CRDC may result in delayed or non-reimbursement of the Total Award until said requirements are received by the CRDC and approved by the Department.
7. **LIAISON.** The CRDC's designated liaison with the Contractor is Luke Walawander, Economic Development Director. The Assisted Business's designated liaison with the CRDC is Monica Plecker, City Planner.

8. EFFECTIVE DATE AND TIME OF PERFORMANCE. This Contract takes effect on December 16<sup>th</sup>, 2013. The services to be performed by the Contractor will be completed no later than December 16<sup>th</sup>, 2015.
9. SCOPE OF SERVICES. The Contractor will perform the services as outlined in the Scope of Work attached as Exhibit A. These services will be performed to the satisfaction of the Assisted Business prior to payment.

It is understood and agreed by the parties that the services of the Contractor do not include any of the following: the disbursement or accounting of funds distributed by the CRDC's financial officer, legal advice, fiscal audits or assistance with activities not related to the project.

10. CONFLICT OF INTEREST. The Assisted Business covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the BSTF project which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that, in performing this Contract, it will employ no person who has any such interest.
11. MODIFICATION AND ASSIGNABILITY OF CONTRACT. This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in the written Contract, are valid or binding. This Contract may not be enlarged, modified or altered except upon written agreement signed by both parties hereto.

Unless explicitly provided for by the terms of this Contract, the Contractor may not subcontract or assign its rights, including the right to compensation, or duties arising hereunder without the prior written consent of the CRDC. Any subcontractor or assignee will be bound by all of the terms and conditions of this contract.

12. CONDITIONAL AGREEMENT. It is expressly understood by the parties hereto that this Contract is dependent and conditioned upon the receipt of the funds from the Department and that in the event that said funds are not provided, the CRDC incurs no responsibilities or liabilities under this Contract.
13. INSURANCE AND IDEMNIFICATION. The Assisted Business warrants that it maintains property and/or liability insurance with policy limits sufficient to cover any loss or injury to any person arising under this Contract or the Project Contract, but not in an amount less than \$1,000,000.00 per occurrence. Proof of Assisted Business's property or liability insurance may be required by the CRDC as part of this agreement. Moreover, in lieu of carrying a general liability insurance policy to cover liability for injuries sustained or caused by the Assisted Business and/or its employees in performance of this Contract, Assisted Business agrees to accept the risk of and liability for any injury sustained or caused by the Assisted Business and/or its employees that occur in the performance of this Contract, unless such injury is the result of the CRDC's acts or failure to act.

The Assisted Business waives any and all claims and recourse against the CRDC, including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incidental to this Contract or the Project Contract, except for liability arising out of the negligence of the CRDC or its officers, agents, or employees. Further, the Assisted Business will indemnify, hold harmless, and defend the CRDC against any and all claims, demands, damages, costs, expenses, or liability arising out of this Contract and the Project Contracts except for liability arising out of the Negligence of the CRDC or its officers, agents, or employees.

Further, the Assisted Business shall require, as an explicit term of the Project Contract: 1) the Contractor to hold harmless and waive any and all claims against the CRDC, including the right of contribution for loss and damage to persons or property arising from or growing out of the Project Contract, except for liability arising out of the negligence of the CRDC or its officers, agents, or employees; and 2) the Contractor will indemnify, hold harmless, and defend the EDO against any and all claims, demands, damages, costs, expenses, or liability arising out of the Project Contract, except for liability arising out of the negligence of the EDO or its officers, agents, or employees.

14. COMPLIANCE WITH WORKERS' COMPENSATION ACT. The Assisted Business accepts responsibility for supplying, and requiring all contractors and its subcontractors to supply, the CRDC with proof of compliance with the Montana Workers' Compensation Act while performing work for the State of Montana. (Mont. Code Ann. §§ 39-71-401, 39-71-405, and 39-71-417.) Neither the Assisted Business nor its employees are employees of the CRDC. The proof of insurance/exemption must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and must be received by the CRDC within 10 working days of the execution of this Contract, and must be kept current for the entire term of the contract.
15. TERMINATION OF CONTRACT. This Contract may only be terminated in whole or in part as follows:
  - a) Termination Due to Loss or Reduction of Funding. The CRDC, at its sole discretion, may terminate or reduce the scope of this Contract if available funding sources are eliminated or reduced for any reason. If a termination or modification is so required, the CRDC may, if sufficient program funds are available, compensate the Assisted Business for eligible services rendered and actual, necessary, and eligible expenses incurred as of the revised termination date. The CRDC will notify the Assisted Business of the effective date of the termination or modification of this Contract and, if a reduction in funding is required, will provide the Assisted Business with a modified Project budget.
  - b) Termination for Cause with Notice to Cure Requirement. The CRDC may terminate this Contract for failure of the Assisted Business, its contractors, or subcontractors to perform or comply with any of the services, duties, terms or conditions contained in this Contract after giving the Assisted Business written notice of the stated failure. The written notice will demand performance of the stated failure within a specified period of time of not less than thirty (30) days. If the demanded performance is not completed

within the specified period, the termination is effective at the end of the specified period unless waived by the CRDC.

- c) Effect of Termination. In the event of termination due to the Assisted Business', its contractors', or subcontractors' failure to perform or comply with any of the services, duties, terms, or conditions of this Contract, any costs incurred will be the responsibility of the Assisted Business. However, at its sole discretion, the CRDC may approve requests by the Assisted Business for reimbursement of expenses incurred. The CRDC's decision to authorize payment of any costs incurred or to recover expended Program funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Assisted Business to comply with the any of those services, duties, terms, or conditions of this Contract, and on whether the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Assisted Business's control.

16. COMPLIANCE WITH LAWS.

- a) The Assisted Business must, in performance of work under this Contract, fully comply with all applicable federal, state, and tribal laws, rules, policies, and regulations, concerning, but not limited to, human rights, civil rights, employment law, and labor law. Any contracting or subcontracting by the Assisted Business that is related to this Contract, including the Project Contract, is subject to this provision.
- b) The Assisted Business shall promptly refer to the CRDC any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted any false claim or has committed any criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Contract.

17. DOCUMENTS INCORPORATED BY REFERENCE. The CRDC's application to the Department for funding, dated December 12, 2013, and all applicable federal and state statutes and regulations are incorporated into this Contract by this reference and are binding upon the Assisted Business.

18. EQUAL EMPLOYMENT OPPORTUNITY. Any hiring of employees by the Assisted Business under this Contract will be on the basis of merit and qualification, and the Contractor will not discriminate against any person on the basis of race, color, religion, creed, sex, national origin, age, disability, marital status, or political belief. As used herein, "qualifications" means qualifications that are generally related to competent performance of the particular occupational task.

19. OWNERSHIP AND PUBLICATION OF MATERIALS. All reports, information, data, and other materials prepared by the Assisted Business pursuant to this Contract are the property of the CRDC and the Department which have the nonexclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any reuse without written verification or adaptation by the Assisted Business or the Contractor for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to the Assisted Business or the Contractor. No material produced

in whole or in part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the CRDC and the Department.

20. **REPORTS AND INFORMATION.** The Assisted Business will maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Contract, the Project Contract, and such other records as may be deemed necessary by the CRDC to assure proper accounting for all project funds.
21. **RETENTION AND ACCESS TO RECORDS.** Assisted Business agrees to retain a copy of its records related to the Project for a period of three (3) years after the Project's completion date or the conclusion of any claim, litigation, or exception related to the Project made by either party, the Contractors, the State of Montana, or any other third party.

Records to be retained include all records supporting services rendered by the Contractor under the Project Contract, records of all payments made by the Assisted Business to the Contractor, any records creating or affecting the Project Contract, insurance certificates and records, and records of personnel, property and financial records, adequate to identify and account for all costs pertaining to this Contract and the Project Contract.

It is expressly understood that the Assisted Business's records relating to this Contract will be available during normal business hours for inspection by the CRDC, the department, and when required by law, the Montana Legislative Auditor and Legislative Fiscal Analyst.

Assisted Business's Project Contract shall require the Contractor to retain and provide the CRDC, the Department, and when required by law, the Montana Legislative Auditor and Legislative Fiscal Analyst, access to all records identified in Section 5 that are in Contractor's possession.

22. **PLACE OF PERFORMANCE, CONSTRUCTION, AND VENUE.** The parties understand and agree that performance of this contract is within the Certified Regional Development Corporation region and that in the event of litigation concerning it, venue is in the 13th Judicial District in and for the County of Yellowstone, State of Montana.

This Contract will be construed under and governed by the laws of the State of Montana.

23. **LEGAL FEES.** In the event either party incurs legal expenses to enforce the terms and conditions of this Contract, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.
24. **ELIGIBILITY.** The Assisted Business certifies that it and its principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible for participation in State of Montana assisted contracts.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on

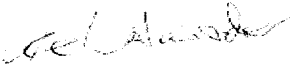
the 5th day of August, 2014.



Assisted Business

CRDC

  
\_\_\_\_\_  
(Signature)

  
\_\_\_\_\_  
(Signature)

BY: Mark A. Mace, Mayor  
Official Representative of the City of  
Laurel

BY: Luke Walawander, Economic  
Development Director  
Official Representative of Beartooth  
Resource, Conservation, and Development  
Area, Inc.

DATE: 08-19-2014

DATE: 8-5-2014

***Exhibit A: Scope of Work***

The Scope of Work will produce the following deliverable: 1) LURA TIFD Master Planning Document. Within the LURA TIFD Master Planning Document will contain the following deliverables, which are stated in the Big Sky Trust Fund application dated December 12, 2013: 1) Strategic Plan and Vision 2) Strategic Needs Assessment: Analysis of the LURA TIF District's Strengths and Weaknesses 3) Market Analysis/Economic Impact and Marketing Plan 4) Development Alternatives and Strategies 5) Implementation Plan and Structure (District and Catalyst Projects) and 6) Public Presentations.

The Scope of Work will address this specific goal: 1) The purpose of the project is to develop an actionable plan and implementation strategy for the redevelopment of the LURA TIFD following the scope of work described in the December 12, 2013 application. The specific objectives are outlined in the December 12, 2013 application.