

**AGREEMENT FOR THE DISTRIBUTION OF
METROPOLITAN PLANNING (PL) FUNDS**

MISSOULA METROPOLITAN TRANSPORTATION PLANNING PROCESS

This Agreement, made and entered into this ____ day of _____ 2021, by and between the STATE OF MONTANA - DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "STATE," and the MISSOULA CONSOLIDATED PLANNING BOARD, hereinafter referred to as "CONTRACTOR."

WITNESSETH THAT:

WHEREAS, the Missoula Consolidated Planning Board has been given the authority to accept, receive, contract for and expend funds, grants and services from Federal, State and local governments or their agencies and instrumentalities; and,

WHEREAS, Title 23 USC Section 104(d), provides planning funds for the purpose of carrying out urban transportation planning requirements of Section 134 of the Title; and,

WHEREAS, the Contractor has been designated by the Governor of the State of Montana as the recipient agency for these planning funds; and,

WHEREAS, these planning funds will be used for the Missoula Metropolitan Transportation Planning Process, as detailed in the annually adopted Unified Planning Work Program; and,

WHEREAS, the Contractor has staff resources available to it to conduct the activities detailed in the annually adopted Unified Planning Work Program; and,

WHEREAS, the participating agencies have executed a cooperative agreement for the Missoula Metropolitan Transportation Planning Process;

NOW, THEREFORE, it is agreed by and between the parties hereto that the Contractor shall direct or cause to be directed the overall operation of the activities detailed in the annually adopted Unified Planning Work Program and conduct or cause to be conducted these activities in consideration of the terms, conditions, covenants and performance as set forth in Section I through XVIII of the General Agreement Provisions and as described in the annually adopted Unified Planning Work Program which are component parts of this Agreement. It is mutually understood that the direction of the overall operation carries with it the responsibility for the Missoula Metropolitan Transportation Planning Process.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals the day and year first above written.

APPROVED FOR MISSOULA
CONSOLIDATED PLANNING BOARD

By: _____
Chair, Consolidated Planning Board

APPROVED FOR THE STATE
DEPARTMENT OF TRANSPORTATION

By: _____
Director

APPROVED FOR CITY OF MISSOULA

By: _____
Mayor, City of Missoula

By: _____
Legal Counsel

ATTEST:

By: _____
City Clerk

APPROVED FOR COUNTY OF MISSOULA

By: _____
Chair, Board of County Commissioners

APPROVED FOR THE MISSOULA
URBAN TRANSPORTATION DISTRICT

By: _____
Chair, Missoula Urban Transportation District

ATTEST:

By: _____
Clerk and Recorder

APPROVED AS TO FORM AND CONTENT

By: _____
City of Missoula Attorney

By: _____
Missoula County Attorney

GENERAL AGREEMENT PROVISIONS

DEFINITIONS

Participating Agencies: Montana Department of Transportation, Missoula Consolidated Planning Board, the City of Missoula, City of Missoula Infrastructure and Mobility Planning Division, Missoula County, and the Missoula Urban Transit District Board.

Local Agencies: City of Missoula and Missoula County.

Program Supervisor: Infrastructure and Mobility Planning Transportation Manager.

Work Program: PL funded portion of the annually adopted Unified Planning Work Program.

PL Funds: Metropolitan Planning (PL) funds, as made available under Title 23 USC, Section 104(d).

I. PURPOSE, SCOPE AND METHODS OF PROCEDURE

The purpose of this Agreement is to provide for the distribution of PL funds to the participating agencies to conduct the Missoula Metropolitan Transportation Planning Process as described in the Work Program.

This Agreement is continuing and is annually updated by a Work Program covering planning activities for the next fiscal year. The Work Program becomes a part of this Agreement upon approval by the Transportation Policy Coordinating Committee (TPCC), the State, and the Federal Highway Administration (FHWA).

The scope of work and methods of procedure are as described in the Work Program, except where detailed work plans are required for approval by the State and the FHWA.

II. REPORTS

1. Brief quarterly progress reports shall be prepared by all participating agencies. The local reports shall be combined by the Program Supervisor and submitted to the State, on or before the 15th day of the month following the end of the quarter. The reports shall describe the activities of the past quarter, such as work accomplished, difficulties encountered, decisions made or any other important information relative to the Work Program.
2. An annual report may be prepared by the Contractor. If prepared, three copies will be submitted to the State for approval.

3. On or before August 1, three draft copies of the Work Program for the ensuing Federal fiscal year shall be submitted to the State for review and comment. Three copies of the final Work Program shall be submitted to the State on or before September 1 for approval.

III. TIME

Work described in this Agreement shall be considered to start at the beginning of each Federal fiscal year as described in the Work Program and shall be completed by the end of the Federal fiscal year for which the Work Program is prepared, except where circumstances beyond the control of the Contractor do not allow completion within the time frame of the Work Program and as coordinated with the State. The Contractor shall be responsible for adherence to this time schedule.

IV. AGREEMENT COSTS

Agreement costs shall include the following categories and be reimbursed according to the Cost Allocation Plan contained in the Work Program:

1. Direct Costs
2. Indirect Costs
3. Fringe Benefits

V. PAYMENT

Payment by the State to the Contractor shall be on a cost reimbursable basis for actual, eligible costs incurred in the performance of the work and in accordance with the terms and conditions set forth in this Agreement. Payments to the Contractor shall not exceed total PL funds available in the Work Program.

It is agreed that salary payments to staff members of the participating agencies working on the Work Program will not exceed salary payments to such members for other similar employment with the participating agency.

The Contractor shall pay all costs incurred in conducting the work as described in the Work Program and shall be reimbursed by the State.

The local agencies shall pay all costs incurred in conducting their portion of work as described in the Work Program and submit billings to the Contractor. The Contractor shall combine all billings for submittal to the State. Payment by the State to the Contractor shall include reimbursement to the local agencies. The Contractor will in turn reimburse the local agencies from this payment.

Invoices for charges and expenses incurred shall not be submitted by the Contractor more frequently than once each month. Reimbursement shall not be made for any costs not clearly and accurately

supported by the participating agencies. Claims for reimbursement must be identified as either "progress" or "final."

VI. SOURCE OF FUNDS

Unless otherwise indicated, PL funds made available under Title 23 USC, Section 104(d), with the appropriate proportion of State matching funds, shall be used for payments.

VII. AUDIT

Funds expended under this Agreement are subject to audit as required by the Single Audit Act Amendments of 1996, 31 USC 7501 et seq in accordance with Office of Management and Budget Circular A-133, Revised, "Audits of States, Local Governments and Non-Profit Organizations", the latest applicable OMB A-133 Compliance Supplement provisions for U. S. DOT and any further revision or supplement thereto. The Contractor shall provide assurance to the State that an audit will be made in accordance with OMB Circular A-133., and that compliance with audit requirements will occur. Failure to comply will result in reimbursement to the State of any funds paid to the Contractor by the State under this Agreement for that fiscal year. One copy of the final annual audit will be forwarded to the Montana Department of Transportation, Statewide & Urban Planning Section. Audit costs under the Single Audit Act are not chargeable to this Agreement.

VIII. SUBCONTRACTING AND SPECIAL SERVICES

The services subcontracted by the participating agencies are to be supervised by the Program Supervisor. The Contractor shall not assign, sublet or transfer any of the work provided for under this Agreement to any organization other than the participating agencies as described in the Work Program without prior approval from the State. No more than 50% of the total PL funds in the Work Program can be subcontracted. Contracts for specialized services, including audits, shall receive prior approval from the State.

IX. PROPRIETARY RIGHTS

If patentable discoveries or inventions should result from work of the participating agencies described herein, all rights accruing from such discoveries or inventions shall be the sole property of the participating agency. However, the State and the United States Government are granted irrevocable, non-exclusive, nontransferable and royalty-free license to practice each invention in the manufacture, use and disposition, according to law, of any article or material and in the use of any method developed as part of the work under this Agreement.

X. INSPECTION OF WORK

The State and the FHWA shall be afforded all opportunities to review and inspect the work and shall during any reasonable time have access to the premises and to all data, notes, records, correspondence, instructions and memoranda pertaining to the work under this Agreement.

XI. RECORDS

The Contractor shall maintain or cause to be maintained accounting records and other evidence pertaining to costs incurred. These data shall be made available to the State, the FHWA, or any

authorized representative of the Federal Government during any reasonable time during the agreement period and for three (3) years after the date of the final payment of PL funds to the Contractor. Copies thereof shall be furnished, upon request.

XII. OWNERSHIP OF DATA

The ownership of data, including summaries and charts, shall be vested in the Contractor, but will be available to the participating agencies, upon request.

XIII. EQUIPMENT AND INSTRUMENTATION

All apparatus and equipment, including tools, shall be used exclusively on the Work Program.

The total funds for purchase of minor items of apparatus and equipment listed in the work Program shall not be exceeded without prior approval from the State.

Major items of apparatus and equipment which are not identified specifically in the Work Program shall be approved by the State prior to purchase. A major item of apparatus or equipment is non-expendable and costing \$5,000.

The ownership of all equipment or tools built, manufactured, or assembled by the Contractor shall upon the completion of this Agreement become vested in the Contractor, subject to the obligations and conditions set forth in 2 CFR 200.313.

XIV. TRAVEL

Expenditures of PL funds for out-of-state travel require prior approval by the State. Expenditures for in-state travel shall be at the discretion of the Contractor, provided expenditures do not exceed travel funds available in the Work Program. All travel for activities not related to the State or the FHWA requires prior approval by the State. Reimbursement for both in-state and out-of-state travel shall be at the prevailing rates for each participating agency. If travel expenses are expected to exceed travel funds available in the Work Program, a Work Program amendment is required, subject to State and FHWA approval.

XV. PUBLICATION

Papers, interim or annual reports, forms or other materials shall not be copyrighted except with prior written approval by the State and the FHWA. Except for copyrighting, the Contractor, the State and the FHWA are free to use the data and results without restriction.

All published reports must include, at a minimum, the following statement on the cover or frontispiece:

Prepared by
City of Missoula Infrastructure and Mobility Planning Division

for the
Missoula Metropolitan Transportation Planning Process
in cooperation with the
Montana Department of Transportation
and the
U. S. Department of Transportation
Federal Highway Administration

XVI. AMENDMENT

Any amendments to the terms of this Agreement shall be agreed to in writing by the State and the Contractor with concurrence by FHWA, prior to undertaking any action affected by the change.

XVII. TERMINATION OF AGREEMENT

If it is considered to be in the best interest of the State and/or the Contractor, either party may terminate its interest and obligations under this Agreement by giving at least sixty (60) days notice in writing to the other party. If the Agreement is so terminated prior to the fulfillment of the terms stated herein, the State shall reimburse the Contractor only for actual expenses incurred to the date of termination.

XVIII. LEGAL RELATIONS

The participating agencies shall comply with all Federal, State and local laws and ordinances applicable to the work to be conducted under this Agreement, including the non-discrimination regulations as illustrated in Exhibit A.

No liability shall be attached to the State by reason of entering into this Agreement, except as expressly provided herein.

**NON-DISCRIMINATION NOTICE
EXHIBIT “A”**

During the performance of this Agreement, the Contractor (hereafter in this Section “the Party”), for itself, its assignees and successors in interest, agrees as follows:

A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Local Agency is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
 - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
 - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.

- (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, §49-3-207, MCA

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

- (1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **"The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party."**
- (3) All video recordings produced and created under contract and/or agreement will be closed captioned.

D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The Party, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Party 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.