

**Funding, Construction, Maintenance, and Local Agency
Guidelines (LAG) Agreement
PE - TA 8199(176), CN - TA 8199(177)
PATH PRESERVATION II MISSOULA
UPN 10420000**

This Agreement by and between City of Missoula (City), and the Montana Department of Transportation (MDT, Department, or State), (collectively Parties) establishes the responsibilities and duties of the Parties with respect to project activities, including the repair of over 7,000 linear feet of cracks 1.75” wide and wider on the Milwaukee Trail and Bitterroot Trail, both located within the City of Missoula, Montana.

Whereas, the construction will be accomplished through Uniform Project Number 10420000, Federal-Aid Project Number PE - TA 8199(176), CN - TA 8199(177), titled PATH PRESERVATION II MISSOULA (Project), located on the Milwaukee Trail from the east side of the University of Montana to west of Reserve Street (US Highway 93); and the Bitterroot Trail from its intersection with the Milwaukee Trail southwesterly to Bunkhouse Bridge (Highway 93 over the Bitterroot River); and,

Whereas, State and/or Federal Highway Administration (FHWA) funds will be used to pay for the construction, the City and State must ensure that federal and state requirements are met in fulfilling its obligations to the FHWA and for the Project to remain eligible for state and/or federal funding; and,

Whereas, the shared-use path upon which the Project is located is a public path not on any commission-designated highway system, and the path is under the legal jurisdiction of the City; and,

Whereas, costs necessary to complete the Project shall be funded by the Federal Transportation Alternatives Program; and,

Whereas, the State and City recognize the need to construct the Project, and are willing to share in its costs in accordance with Article VI, Funding; and,

Whereas, the City and MDT recognize the need to construct the Project and to duly execute this Agreement in advance of construction phase programming; and,

Whereas, the City desires to have the Project constructed, the City deeming it to be a valuable and beneficial consideration, and it will perform the functions, duties and responsibilities as set forth in this Agreement;

Now, therefore, the Parties agree as follows:

ARTICLE I. FEDERAL SUBRECIPIENT AWARD INFORMATION

1. City’s Unique Entity ID is NBMKDLVHBMF1;

2. This Project is not for research and development;
3. Federal Award Identification Number (FAIN) 693JJ2223000;
4. Federal Award Project Description: Transportation Alternatives;
5. Awarding Agency: FHWA;
6. The Period of Performance begins the date this Project is federally programmed until the closure date;
7. Indirect Cost Rate
 - a. If the City (Subrecipient) chooses to claim an indirect cost for reimbursement, the indirect cost rate must be in accordance with 2 CFR Part 200.414 and Section E, Appendices III-VIII and approved by your cognizant agency. A copy of the indirect cost approval letter must be submitted to MDT and approved prior to any reimbursement. If MDT is the City's (Subrecipient's) primary source of federal funds, then a copy of the City's indirect cost plan must be submitted to MDT for review and approval. If the City (Subrecipient) does not have an indirect cost rate approved by your cognizant agency, then a then a 10% "de minimus" indirect cost rate may be used.

ARTICLE II. GENERAL OBLIGATIONS OF MDT

1. MDT will provide appropriate and timely input during the Project's development.
2. If the City does not fulfill their maintenance requirements as stated herein, MDT may complete the required maintenance and seek compensation from the City. In doing so, MDT must first provide notice to the City allowing time to complete any such maintenance. If MDT performs such maintenance under this section, it must provide detailed invoices of such costs to the City.
3. MDT may complete any maintenance required due to a public emergency and seek compensation from the City for any costs incurred. In doing so, MDT may first provide notice to the City, when possible, allowing time to complete any such maintenance. If MDT performs maintenance under this section, it must provide detailed invoices of such costs to the City.

ARTICLE III. GENERAL OBLIGATIONS OF THE CITY

1. The City will design, award, and administer the construction contract to construct the Project.
2. The City will provide MDT opportunities to participate in the Project's development, including invitation to the final inspection of the Project.
3. The City agrees to conform in all regards to Mont. Code Ann. Title 61, Chapter 8, and will not take any action, by enacting an ordinance or otherwise, in contradiction of the traffic laws in Mont. Code Ann. Title 61, Chapter 8.

4. The City will continue to enforce the ordinances, laws and/or regulations necessary and essential for the operations of the Project.
5. The City, at its sole expense, will maintain the City signs installed as part of this Project. For the purposes of this Agreement, “maintenance of signs”, is defined as: the inspection, cleaning, repair and replacement of signs damaged through weathering, vandalism, the wind, or other means.
6. The City, at its sole expense, must obtain and maintain all federal, state and local building permits or other permits of any type or nature required by a governing authority, except as noted in this Agreement.
7. Unless specified otherwise herein, the City agrees any amenities added and solely paid for by the City with this Project to the project location are the sole responsibility of the City. If these amenities must be moved or modified by MDT due to future projects or maintenance requirements, the costs for moving or modifying the amenities will be paid for solely by the City. MDT will notify the City in advance of the need to move or modify the amenities and allow a reasonable amount of time to perform the work. If the City chooses not to move or modify the amenities, MDT will perform the work and invoice the City for the costs.
8. The City agrees that it will assume full and complete responsibility for the Project including any right of way acquired for the Project and ownership and responsibility for any permits obtained for the Project.

ARTICLE IV. PROJECT-SPECIFIC PROVISIONS

Small Municipal Separate Storm Sewer System (MS4) Permit

- a. The Project will be designed in compliance with applicable Small MS4 Permit requirements.
- b. The City agrees to operate, monitor and maintain storm water management features in compliance with applicable MS4 requirements.

ARTICLE V. PROJECT-SPECIFIC FEATURES

Shared-Use Path

- a. Upon completion of the Project, the City agrees that it is responsible, at no cost to MDT, to service, maintain, repair, and pay the cost of operating the path within the project limits, such that it does not negatively impact the operation of the path or the safety of the traveling public. If all or part of the shared use path becomes unsafe for use, the City agrees to restrict access to the affected area until the condition has been remedied.
- b. For the purposes of this Agreement, “maintenance of a shared-use path” is defined as: grinding or milling down displacements; surface patching; crack sealing; sweeping; cleaning; washing; replacing portions of damaged path;

removal of snow and ice; repair of chipped, fractured, or broken surface from any cause, including but not limited to frost heaving, landscaping, tree roots, or encroachments; removal of debris and other obstructions or impediments to the safe travel of pedestrians or other path users; maintenance of all associated drainage features; maintenance of path-related signs; and any and all other normally accepted maintenance practices.

- c. For the purposes of this Agreement, “maintenance of shared-use path signs,” is defined as: the inspection, cleaning, repair and replacement of signs damaged through weathering, vandalism, wind, and other means.

ARTICLE VI. FUNDING

1. The City agrees to pay the requisite 13.42% non-federal matching funds for the Project and associated indirect costs up to the allowable overrun percentage in accordance with Tables 1 and 2 below.
2. The City is responsible for 100% of non-federal aid eligible costs and for the payback of state and federal funds expended on non-federal aid eligible elements of the Project, if required.
3. It is understood and agreed between the parties that Section 17-1-106, MCA, requires any state agency that receives non-general funds, including MDT, to identify and recover its indirect costs. These costs are in addition to the direct Project costs. Indirect costs will be recovered on MDT charges to the project. Indirect costs will not be recovered on City charges to the project. See Table 1 below.
4. The City will be billed in advance for its local funds for MDT charges, including indirect costs and materials test rate. The billing for the Project’s preliminary engineering (PE phase) for MDT charges will be sent within 30 days of this Agreement being signed. The billing for the Project’s CE phase will be sent no fewer than sixty (60) days prior to the Project’s anticipated advertisement for letting.
5. The City will submit payment to the State within thirty (30) days of billing. Payments to this Project will be provided to the State in the form of a check to be credited to the Project. The payment(s) should be sent to MDT's Administration Division at:

Montana Department of Transportation
Attention: Collections
2701 Prospect Avenue
P.O. Box 201001
Helena, MT 59620-1001

6. MDT will not submit programming requests to FHWA for individual project phases until the required local funds have been transferred to MDT. The Project will not advance past the Preliminary Engineering (PE) phase until a funding package (CN &

CE) for all improvements, including contingencies and overruns, is in place to MDT's satisfaction.

7. If payment is not made by the City within the thirty (30) day period, interest on the unpaid amount will accrue at the rate of 10% per year and continue to accrue until paid in full.
8. MDT will not participate in any future funding Agreement with the City until full payment, including any interest, is received from the City.
9. City agrees that, if the City terminates project development at any time, it will reimburse MDT for all costs incurred by MDT up to the date of the stoppage, including any required payback of Federal funds already expended on the Project.
10. If, after initial payment is made for the Project's construction (CN & CE phases), the bid opening or award by the City is delayed or postponed by thirty (30) days or more or canceled for any reason, the State agrees to refund the City initial payment within thirty (30) days, upon the City's written request.
11. The current Project cost estimate, including IDC, materials test rate, and inflation, is shown in Table 1. This estimate will be updated, until Project closeout, at Project milestones and/or as more refined estimates become available. Any such revisions will be incorporated into this Agreement via Amendment, in accordance with the General Terms and Conditions.
12. The City's Project Manager will inform the State point of contact as soon as possible of anything that it appears will result in a cost increase and will discuss with the City the need for any possible additional funds, alternative designs, and/or reduction of the Project's scope and will consider the State comments and concerns about the additional costs and/or alteration in scope or design. None of this will prevent, delay, or excuse the City from paying for any additional costs deemed necessary by State.
13. The City agrees to award the Project using Federal, State, and City matching funds, provided that the lowest responsive bid does not exceed the allowable overrun percentage shown in Table 2.
14. If the lowest responsive bid exceeds the allowable overrun percentage, as listed in Table 2, the City will contact the State to determine a funding solution agreeable to both Parties.
15. The Parties understand that it is possible that the estimated cost of the Project's construction may be exceeded once the Project has begun.

Table 1 - Project Cost Estimate (Including IDC and Inflation)

Project Phase	Total Cost of Phase	Federal Funds (TA) 86.58%	State Matching Funds	City Matching Funds 13.42%	City Additional Funds
Preliminary Engineering (PE) (MDT)	\$796	\$689	\$0	\$107	\$0
Preliminary Engineering (PE) (City)	\$7,160	\$6,199	\$0	\$961	\$0
Construction (CN) (City)	\$90,923	\$78,721	\$0	\$12,202	\$0
Construction Engineering (CE) (MDT)	\$341	\$295	\$0	\$46	\$0
Construction Engineering (CE) (City)	\$3,069	\$2,657	\$0	\$412	\$0
Subtotal	\$102,289	\$88,562	\$0	\$13,727	\$0
IDC (13.56%)	\$154	\$133	\$0	\$21	\$0
Grand Total	\$102,443	\$88,695	\$0	\$13,748	\$0

The above costs are estimates and include inflation, current IDC, and materials test rate, which is included in the CN phase. The rows above are labeled with "MDT" and "City." The MDT rows are costs originating from MDT to provide oversight. The City rows are costs originating from the City for project development, construction, and construction engineering. Both MDT and City rows are billed to Federal Funds (TA) and City Matching Funds. The Indirect Cost Rate (IDC) only applies to the MDT rows.

Table 2 - MDT Guidelines for Awarding Construction Agreements
(Used to determine allowable overrun cost participation based on construction bid award amount)

LOWEST RESPONSIVE BID	ALLOWABLE OVERRUN %
UNDER \$50,000	30%
\$50,000 - \$200,000	25%
\$200,000 - \$500,000	20%
\$500,000 - \$2,000,000	15%
OVER \$2,000,000	10%

ARTICLE VII. GENERAL OBLIGATIONS OF THE PARTIES

1. The CITY shall meet the requirements for Federal-Aid funding set forth in this Agreement. The CITY and MDT agree that the PROJECT is a pilot project for a revised Local Agency Guidelines (LAG) process and will utilize the guidance set forth in the existing MDT LAG Manual (September 2013) where applicable and practical. The CITY and MDT agree to work in partnership to resolve any requirements of the LAG Manual that are not practical or feasible in the delivery and administration of this PROJECT.
2. The PARTIES shall manage the delivery of the project phases and project areas of responsibility as identified below.

- a. Project Phases:
 - i. [PL] Program Development (Planning) - **MDT**
 - ii. [PE] Project Development (NEPA, Design, Permitting) - **CITY**
 - iii. [RW] Right of Way Acquisition – **CITY**
 - iv. [IC] Utilities – **CITY**
 - v. [CN/CE] Advertising Bid & Award – **CITY**
 - vi. [CN & CE] Construction Contract Admin and Closeout - **CITY**

- b. CITY Project Area Responsibilities :
 - i. Consultant selection and contract administration;
 - ii. Design;
 - iii. Environmental document preparation;
 - iv. Advertisement, bid, and award;
 - v. Civil Rights project management oversight, which includes compliance with the Americans with Disabilities Act (ADA), Disadvantaged Business Enterprise (DBE), Equal Employment Opportunity (EEO), On the Job Training (OJT), and Title VI Programs;
 - vi. Construction contract administration.

- c. MDT Project Area Responsibilities:
 - i. Civil Rights reporting for ADA, DBE, EEO, OJT, and Title VI Programs;
 - ii. Approval of Environmental documents and/or submittal of certification to FHWA that the action qualifies for a Categorical Exclusion (CE) for projects as allowed in section IV.A. of the Programmatic Agreement Regarding the Processing of Action Classified as Categorical Exclusions for Federal-Aid Highway Projects and Amendment 1.
 - iii. Final Environmental certifications;
 - iv. Final certification of Right of Way (RW) transactions;
 - v. Final certification of Utilities;
 - vi. Requests for authorization of FHWA funds;
 - vii. Public interest findings determinations;
 - viii. Project final acceptance.

- d. Federal Highway Administration Project Area Responsibilities:
 - i. Approval of National Environmental Policy Act (NEPA) environmental documents as described in Section IV.B of the

Programmatic Agreement Regarding the Processing of Action Classified as Categorical Exclusions for Federal-Aid Highway Projects and Amendment 1. and coordination of Endangered Species Act (ESA) consultation with USFWS.

- ii. Approval of MDT's ADA, DBE, EEO, OJT, and Title VI programs
- iii. Authorization of FHWA funds
- iv. "Buy America" waiver requests
- v. Experimental features and special experimental projects
- vi. Periodic audits of program and specific projects

3. The PARTIES agree to the following project personnel and communication structure:

- a. Project Manager – will be appointed and retained by the CITY and is the person with responsible charge as defined in 23 CFR 172.9. The CITY may appoint and retain different Project Managers for various project phases and will inform MDT of any change in Project Management.
- b. Local Agency Liaison – will be appointed and retained by MDT to provide assistance as requested by the CITY. This liaison may be different MDT personnel during the design and construction phases.
- c. MDT Program Manager – will work directly with the Project Manager and Local Agency Liaison as needed.
- d. CITY Engineer – will provide principal oversight dedicating reasonable support and resources necessary for successful delivery of the project.

4. CITY LAG OBLIGATIONS

- a. The CITY shall meet the requirements set forth in the MDT LAG Manual (September 2013) where applicable and practical. The CITY and MDT agree to work in partnership to resolve any requirements of the LAG Manual that are not practical or feasible in the delivery and administration of this PROJECT.
- b. The CITY shall track internal costs and project expenses in an accounting system that can allocate costs by project and can code between allowable and unallowable costs.
- c. The CITY shall provide initial project budget estimates to MDT broken out by phase and by work planned to be performed with internal CITY staff and work planned to be performed by consultants and/or contractors.
- d. The CITY shall present reimbursement requests for the Eligible Costs incurred by Agency on behalf of the Project directly to MDT's Local

Agency Liaison for review and approval. Such invoices shall identify the Project, UPN Number, Agreement number, Project phase, amount charged to each phase (e.g., PE, RW, CN), reimbursement request number, and itemize all expenses for which reimbursement is claimed. The CITY shall submit invoices to MDT no less than monthly but not greater than quarterly, based on actual expenses incurred, and must clearly specify the percentage of completion of the Project. The CITY shall also include with the invoice a Project progress report or summary that describes work accomplished for the invoicing period, and work expected for the next invoicing period.

- i. Eligible Costs are the CITY'S actual PROJECT costs that are:
 1. Reasonable, necessary and directly incurred in the development of the PROJECT;
 2. Documented in accordance with generally accepted accounting principles established by the Governmental Accounting Standards Board; and
 3. Eligible or allowed uses of Federal and state of Montana Funds.
- ii. Eligible Costs may include Indirect Costs (IDC) rates that have been approved by MDT. When an approved IDC does not exist, the CITY may request an IDC rate of 10% de minimus, in accordance with 2 CFR 200.
- iii. MDT, in its sole discretion, determines whether a particular cost satisfies the criteria set forth in this Paragraph and is an Eligible Cost.
- iii. The CITY may appeal any determination of an Ineligible Cost for further review, upon which, MDT will provide a detailed explanation of the determination, including any statute or program guidelines used to make such determination.
- e. The CITY shall have a written policy for the selection of engineering consultants that meet the requirements of 23 CFR 172. The City may choose to adopt MDT's consultant selection policy, modified (in writing) to be applicable to CITY personnel.
- f. The CITY shall meet the requirements of 23 CFR Part 636 and Title 18, MCA, regarding design-build contracts. The CITY shall have a written procedure for design-build contracts, if applicable to this project, or may choose to adopt MDT's design-build guidelines.
- g. The CITY shall develop a project delivery schedule, and status it no less than on a quarterly basis. The schedule will include milestones of major project phases (PE, RW, I/C, CN, and CE).

- h. The CITY shall provide notice to MDT when subsequent project phases (RW, IC, CN, CE) are ready to be programmed.
- i. The CITY shall not place or plan to place permanent project features outside documented public R/W. If additional RW (fee acquisition, easement, or temporary permits) are required to be completed, a RW phase will be initiated.
- j. The CITY shall be financially responsible for any federal payback deemed to be the result of the CITY's negligence in adhering to requirements set forth in this amended Agreement.
- k. The CITY shall not begin RW, IC, CE, or CN until the project NEPA/MEPA document has been signed and approved. The CITY is encouraged not to begin final design activities until NEPA/MEPA document signature.
- l. If performing these phases, the CITY shall be responsible for the necessary effort to complete environmental, RW, railroad, and utility certification prior to requesting programming for the construction (CN) phase. However, MDT shall be responsible for final approval of environmental, RW, railroad and utility certification.
- m. The CITY will utilize the Montana Public Works Standard Specifications, MDT Standard Specifications, or any combination thereof, for the administration of the Project including construction inspection and materials testing.
- n. The CITY shall include MDT in preliminary plan reviews and document comment resolutions. The peripheral of MDT's review shall include Americans with Disabilities Act (ADA) compliance, constructability, quantities, materials, and roadway geometrics.
- o. The CITY shall develop the project plans and specifications in accordance with all applicable federal/national regulations and guidelines, including but not limited to ADA, Public Rights-of-Way Accessibility Guidelines (PROWAG), Manual on Uniform Traffic Control Devices (MUTCD), "Buy America"/"Buy American", etc.
- p. The CITY shall support MDT in delivering this project in accordance with all federal and state requirements encumbered upon agencies utilizing federal-aid funding.

5. MDT LAG OBLIGATIONS

- a. MDT shall submit project phase programming requests to FHWA.
- b. MDT shall provide timely cost reimbursements back to the CITY upon properly completed reimbursement requests.

- c. MDT shall verify the completeness of the NEPA/MEPA documentation and provide a recommendation to the CITY when to begin work on final design activities.
- d. MDT shall provide final certification of the environmental, RW, railroad, and utilities, based on information and recommendations provided from the CITY.
- e. MDT shall be financially responsible for any federal payback deemed to be the result of MDT's negligence in adhering to requirements set forth in this agreement.
- f. MDT shall consolidate all project comments during plan reviews to avoid conflicting direction, as well as strive to have comments provided no later than 14-days from the release of an agreed upon plan package release date.
- g. MDT shall support the CITY in its efforts to successfully complete this project by being responsive and providing guidance as requested.
- h. Upon request, MDT shall promptly provide personnel for a final project walk through and completion certification.

ARTICLE VIII. GENERAL TERMS AND CONDITIONS

1. **Term** – The term of this Agreement shall be ten (10) years. After the initial ten (10) year term, this Agreement will renew automatically, for successive one (1) year terms, unless superseded by a new Agreement between the parties.
2. **Termination** – This Agreement may be terminated by MDT if the City violates or breaches any term, condition, or article of this Agreement and the City has failed to correct (or reasonably initiate correction) within 60 days of receiving notice in writing addressed to the City's representative, of such violation or breach of any term, condition, or article of this Agreement. If this Agreement is terminated, the improvements become the property of MDT, without reimbursement. MDT will maintain the property as it sees fit and may remove the improvements without City or landowner approval. MDT may seek compensation for maintenance or removal of the improvements from the City.
3. **Other Agreements** – Other Agreements pertaining to the project area remain in full force and effect. In the case of a conflict between this Agreement and a previously executed Agreement, the terms of this Agreement apply.
4. **Hold Harmless & Indemnification**
 - a. The City agrees to protect, defend, indemnify, and hold MDT, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of

action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the City's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of the City, its agents, or sub-contractors, under this Agreement, except the negligence of MDT.

- b. The State and Department of Transportation agrees to protect, defend, indemnify, and hold the City, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the MDT's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of MDT, its agents, or sub-contractors, under this Agreement, except the negligence of the City.

5. Insurance

- a. General Requirements: Each party shall maintain for the duration of this Agreement, at its own cost and expense, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the duties and obligations in this Agreement by each party, its agents, employees, representatives, assigns, or sub-contractors. This insurance shall cover such claims as may be caused by any negligent act or omission.
- b. General Liability Insurance: Each party shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1 million per occurrence and \$2 million aggregate per year to cover such claims as may be caused by or arising out of any negligent acts or omissions in work or services performed under this Agreement, or as established by statutory tort limits as provided by a public entity self-insurance program either individually or on a pool basis as provided by Mont. Code Ann. Title 2, Chapter 9.
- c. General Provisions: All insurance coverage must be with a carrier licensed to do business in the State of Montana or by a public entity self-insured program either individually or on a pool basis. Each party must notify the other immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. Each party reserves the right to request complete copies of the other party's insurance policy or self-insured memorandum of coverage at any time.
- d. Workers' Compensation Insurance: The City must maintain workers' compensation insurance and require its contractors and its contractor's sub-contractors to carry their own workers compensation coverage while performing work within MDT right-of-way in accordance with Mont. Code Ann. §§39-71-401 and 39-71-405. Neither the contractor nor its employees

are employees of MDT. This insurance/exemption must be valid for the entire Agreement period.

6. Public Safety

It is agreed, if any repairs to the elements of the Project must be performed to address or prevent a public hazard, the City will immediately protect the area from public access, contact the appropriate MDT District Maintenance Office, and make reasonable and timely effort to correct or repair the hazard.

7. Invoicing and Indirect Cost (IDC)

- a. If MDT incurs any costs resulting from this Agreement, MDT shall be entitled to be compensated for such costs by the City and the City shall pay the same within thirty (30) days of its receipt of such invoices.

Mont. Code Ann. §17-1-106, requires any state agency, including MDT, which receives non-general funds to identify and recover its indirect costs (IDC). These costs are in addition to direct project costs. MDT's IDC rate is determined annually as a percentage of the project's direct costs to cover the project's share of MDT's IDC as defined by 2 CFR Part 200, Appendix VII. MDT's current IDC rate is 13.56% for fiscal year 2024 (July 1, 2023 to June 30, 2024). If the work occurs or extends into fiscal year 2025 or beyond the IDC rate will be charged at the rate agreed to by MDT and the Federal Highway Administration (FHWA).

- i. Invoice will be sent to:

Betsy Willett
Business Manager
100 Hickory St.
Missoula, MT 59801
willett@ci.missoula.mt.us

- ii. Payments shall be made to:

Montana Department of Transportation
Attention: Collections
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

8. Choice of Law and Venue – This Agreement shall be governed by the laws of Montana. The parties agree that any litigation concerning this Agreement must be brought in the First Judicial District Court, in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees except as otherwise noted in this agreement. In case of conflict between the terms and conditions of this Agreement and the laws of the State of Montana, the laws of the State of Montana shall control.

9. Binding Effect – The benefits and obligations set forth in this Agreement shall be binding upon, and inure to the benefit of, their respective successors, administrators and assigns of the Parties.
10. Relationship of Parties – Nothing contained in this Agreement shall be deemed or construed (either by the Parties hereto or by any third party) to create the relationship of principal and agent or create any partnership joint venture or other association between the Parties.
11. Non-Discrimination – The City will require that during the performance of any work arising out of this Agreement the City, for itself, assignees, and successors shall comply with all applicable non-discrimination regulation set forth in Attachment “A” attached hereto and made part of this Agreement.
12. ADA – MDT requires that any construction or maintenance resulting from this Agreement/Lease must include appropriate pedestrian facilities that meet or exceed current MDT standards for accessibility as set forth by the United States Department of Justice 2010 ADA Standards for Accessible Design, United States Access Board Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way, and MDT’s Detailed Drawings, 608 series.
13. Audit – The City grants to the Legislative Auditor and the Legislative Fiscal Analysts the right, without prior notice and during normal business hours, to audit, at their own costs and expense, all records, reports, and other documents, the City maintains in connection with this Agreement.
14. Utilities – This Agreement is subject to the right of any private or public utility entity now lawfully occupying the right-of-way to continue to operate and maintain utility facilities thereupon. Copies of existing utility permits may be obtained from the MDT District Utility Agent.
15. Amendment and Modification – This Agreement may be modified or amended only by written Addendum signed by the parties. In addition to the terms and conditions contained herein, the provisions of any Addendum may be incorporated and made a part hereof by this reference in the terms of the amendment so provided. In the event of any conflict between the terms and conditions hereof and the provisions of any Addendum, the provision of the Addendum shall control, unless the provisions thereof are prohibited by law.
16. Access and Retention of Records – The City agrees to provide the State Legislative Auditor or their authorized agents access to any records necessary to determine compliance with the agreement. The City agrees to create and retain records supporting this agreement for a for a period of three (3) years after the completion date of the Agreement or the conclusion of any claim, litigation or exception relating to the State of Montana or a third party.
17. Representatives
 - a. City’s Representative: The City’s Representative for this Agreement shall be the City Manager or designee or such other individual as City shall designate

in writing. Whenever approval or authorization from or communication or submission to City is required by this Agreement, such communication or submission shall be directed to the City's Representative and approvals or authorizations shall be issued only by such Representative; provided, however, that in exigent circumstances when City's Representative is not available, MDT may direct its communication or submission to other designated City personnel or agents.

- b. MDT's Representative: The MDT Representative for this Agreement shall be the District Administrator or Maintenance Chief or such other individual as MDT shall designate in writing. Whenever direction to or communication with MDT is required by this Agreement, such direction or communication shall be directed to MDT's Representative; provided, however, that in exigent circumstances when MDT's Representative is not available, City may direct its direction or communication or submission to other designated MDT personnel or agents.

18. Counterpart Execution – This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

IN WITNESS WHEREOF, MDT's authorized representative has hereunto signed on behalf of the State of Montana, and the City's authorized representative on behalf of the City, has signed and affixed hereto the seal of the City.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

By _____ Date _____
Montana Department of Transportation

Approved for Legal Content

Approved for Civil Rights

CITY OF MISSOULA

Andrea Davis, Mayor

ATTEST:

Claire Trimble, Legislative Services / City Clerk

APPROVED AS TO FORM:

Ryan Sudbury, City Attorney (Civil)

**ATTACHMENT A: MDT
NONDISCRIMINATION AND
DISABILITY ACCOMMODATION
NOTICE**

MDT NONDISCRIMINATION AND DISABILITY ACCOMMODATION NOTICE

Montana Department of Transportation (“MDT”) is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter “protected classes”) by its employees or anyone with whom MDT does business:

Federal protected classes

Race, color, national origin,
sex, sexual orientation, gender identity,
age, disability, income-level & Limited
English Proficiency

State protected classes

Race, color, national origin, parental/marital status,
pregnancy, childbirth, or medical conditions related to
pregnancy or childbirth, religion/creed, social origin or
condition, genetic information, sex, sexual orientation,
gender identification or expression, ancestry, age,
disability mental or physical, political or religious
affiliations or ideas, military service or veteran status,
vaccination status or possession of immunity passport

For the duration of this contract/agreement, the PARTY agrees as follows:

(1) Compliance with Regulations: The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Non-discrimination:

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. The PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. A statement that the PARTY does not discriminate on the grounds of any protected classes.
 - ii. A statement that the PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
 - iii. Contact information for the PARTY’s representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
 - iv. Information on how to request information in alternative accessible formats.

- c. In accordance with Mont. Code Ann. § 49-3-207, the PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that the PARTY does not discriminate on the grounds of any protected class.

(3) Participation by Disadvantaged Business Enterprises (DBEs):

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml
- b. By signing this agreement, the PARTY assures MDT that:

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

- c. The PARTY must include the above assurance in each contract/agreement the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(6) Sanctions for Noncompliance: In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

(7) Pertinent Non-Discrimination Authorities: During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Federal

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

State

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

(8) Incorporation of Provisions: The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.