

Construction Agreement
STPB 8113(8)
HIGGINS AVE. BR. REHAB-MISSOULA
UPN 8807000

This Agreement by and between The City of Missoula (City), and the Montana Department of Transportation (MDT, Department, or State), establishes the responsibilities and duties of the parties in respect to project activities on a portion of Higgins Avenue. located within the City of Missoula, Montana.

Whereas, the construction will be accomplished through Uniform Project Number 8807000, Federal-Aid Project Number STPB 8113(8), titled HIGGINS AVE. BR. REHAB-MISSOULA (Project) located on Higgins Avenue. between RP 0.06, Sta. 102+30.00, 300-ft south of bridge between intersections with S. 4th Street and S. 3rd Street and RP 0.34, Sta. 116+89.32, 200-ft north of the bridge near the intersection of Front Street; 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 Project lies on the designated Urban Highway System under the jurisdiction of the Montana Transportation Commission and MDT as per Mont. Code Ann. 60-2-110; 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 V, 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 Agreement;

Whereas, the City and MDT acknowledge a previous funding memorandum for this project was signed in June 2016, and this agreement supersedes the previous memorandum.

Now, therefore, the parties agree as follows:

ARTICLE I. GENERAL OBLIGATIONS OF MDT

1. MDT will design and award a Contract to construct the Project.
2. MDT will provide the City opportunities to participate in the Project's development, including invitation to the final inspection of the project.

3. MDT will maintain the roadway surface, including pavement repair, pavement preservation, and snowplowing, and will maintain all features, including signals (if present) and non-decorative roadway lighting, within the roadway prism unless otherwise noted herein.
4. If the City does not fulfill any maintenance requirements 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.
5. For any maintenance requirements that are the obligation of the City, as stated herein, 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.
6. MDT is the issuing authority for all future encroachment and approach permits.

ARTICLE II. GENERAL OBLIGATIONS OF THE CITY

1. 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.
2. The City will provide appropriate and timely input during the Project's development.
3. The City will continue to enforce the ordinances, laws and/or regulations necessary and essential for the operations of the project.
4. 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.
5. The City agrees to inspect the Shared-Use Path on a periodic basis, at least annually to discover any potential section that require repair or replacement. This does not include structure repair or the paint or coating maintenance of the Pedestrian Rail on the Bridge Structure.
6. The City agrees to take ownership and be solely responsible for the staircase located on the northwest side of the bridge including winter maintenance upon completion of the project.
7. The City agrees to be solely responsible for the drainage system including, bridge deck drainage system, dry wells, storm drains, sumps and Hydrodynamic Separator.

8. The City agrees no fixture, building, structure, or other permanent installation other than those approved by MDT shall be constructed or placed within MDT right-of-way without prior written approval from MDT.
9. Unless specified otherwise herein, the City agrees it will fund any additional costs MDT may incur on future MDT projects due to any amenities the City places in the MDT right-of-way not included as part of this project.
10. The City agrees that any City-performed maintenance that occurs within MDT right-of-way must be reviewed and approved by the appropriate MDT District Maintenance Office prior to initiation of the maintenance.

ARTICLE III. PROJECT-SPECIFIC PROVISIONS

1. Construction Storm Water General Permit

- a. Upon completion of all physical work associated with construction activity, the parties will inspect the temporary erosion and sediment control measures and devices as part of MDT's final inspection with MDT's Contractor. MDT will provide the City with the Storm Water Pollution Prevention Plan (SWPPP) package for City review. Within ten (10) days of receiving the package, the City will provide MDT with an itemized list of any outstanding records or deficiencies associated with the SWPPP. Upon MDT's and the City's approval of site conditions and Contractor records, MDT will provide the City a Permit Transfer Notification (PTN) form. The City must return the signed PTN form to MDT within ten (10) business days. MDT will forward the completed PTN form and transfer fees to the Montana Department of Environmental Quality (DEQ).
- b. Once DEQ transfers the Construction Storm Water General Permit Authorization, the City will inspect, maintain, and revise the Best Management Practice devices (BMPs) in accordance with DEQ permit requirements until final stabilization is met and permit coverage is terminated.
- c. MDT agrees to pay annual fees associated with permit coverage until termination. To assure payment, the City must forward invoices to the MDT's Environmental Services Bureau for payment.

2. Small Municipal Separate Storm Sewer System (MS4) Permit

- a. MDT concludes, and the City agrees, the project work is 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.

3. Class V Injection Wells

- a. MDT concludes, and the City agrees, a portion of the project qualifies as a Class V disposal system as defined in 40 CFR 144.6. As a result, this system is regulated by the Underground Injection Control (UIC) Program of the Environmental Protection Agency (EPA) under Part C of the Safe Drinking Water Act.

- b. The City agrees to provide MDT with the information necessary for EPA to issue a rule authorization for the Class V disposal system.
- c. MDT agrees to provide appropriate notice to EPA to request rule authorization for the underground drainage device.
- d. The City agrees to operate and maintain the injection system.

ARTICLE IV. PROJECT-SPECIFIC FEATURES

1. Sidewalks

- a. Upon completion of the Project by the State and its Contractor, the City agrees that it is responsible, at no cost to MDT, to service, maintain, repair, and pay the cost of operating the sidewalk within the project limits, such that it does not negatively impact the operation of the sidewalk or the safety of the traveling public. If all or part of the sidewalk 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 sidewalk” is defined as: grinding or milling down displacements; surface patching; crack sealing; sweeping; cleaning; washing; replacing portions of damaged sidewalk; 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 safe pedestrian travel; and any and all other normally accepted maintenance practices.

2. Shared-Use Path

- a. Upon completion of the Project by the State and its Contractor, 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.

3. Lighting

- a. Upon completion of the Project by the State and its Contractor, the City agrees that it is responsible, at no cost to MDT, to service, maintain and repair the decorative and/or pedestrian lighting installed as part of this project. MDT will continue to pay the utility service costs.
- b. For the purposes of this Agreement, “maintenance of street lighting”, is defined as: the inspection of the lighting system for operation, cleaning lamps, lenses and reflectors, stocking of replacement parts, bulb replacement, and repairs to and replacement of damaged fixtures.
- c. Any major repair costs for lighting damage not recoverable from third parties shall be the responsibility of the City.

4. Landscaping/Irrigation Equipment

- a. Upon completion of the Project by the State and its Contractor, the City agrees that it is responsible, at no cost to MDT, to service, maintain and repair the landscaping and irrigation equipment installed as part of this project.
- b. For the purposes of this Agreement, “maintenance of landscaping and irrigation system,” is defined as: mowing, watering, debris removal, weed control, fertilizing, tree/shrub trimming including removal, replacement and maintenance of sight triangles, the repair and replacement of fences, and maintenance of all features in compliance with ADA/PROWAG. The irrigation system shall be fully operational, free of leaks, with heads selected and adjusted to reduce water waste.
- c. If the City is not able to complete the maintenance on the landscaping and irrigation system as per this Agreement, the improvements may become the property of MDT, without reimbursement. If landscaping or irrigation become MDT property, MDT will maintain the property as it sees fit and may

remove the landscaping and irrigation system without City approval. MDT may seek compensation for the maintenance or removal of the landscaping and irrigation system from the City.

5. Sidewalk Benches/Bike Racks/Other Sidewalk Amenities

- a. Upon completion of the Project by the State and its Contractor, the City agrees that it is responsible, at no cost to MDT, to service, maintain and repair the benches, bike racks, planters, tree grates, and other sidewalk amenities installed as part of this project.
- b. For the purposes of this Agreement, “maintenance of benches, bike racks, planters, tree grates, and other sidewalk amenities,” is defined as: regular inspection to ensure the safety and functionality of the amenity, and that the hardware is intact, fasteners are made flush with surfaces, and seats and backings are smooth with no protrusions or sharp edges. The placement must allow for a clear approach area adjacent to the furnishing and meet pedestrian access route requirements consistent with ADA (PROWAG) requirements.

6. Missoula City Signage

- a. Upon completion of the Project by the State and its Contractor, the City agrees that it is responsible, at no cost to MDT, to maintain the City signs within the Project.
- b. For the purposes of this Agreement, “maintenance of signs,” is defined as: the inspection, cleaning, repair and replacement of signs damaged through weathering, vandalism, wind, or other means.
- c. For the purpose of this Agreement, “City signs” are defined as: any standard or non-standard signs placed solely at the request of the City included or not-included in this project.

ARTICLE V. FUNDING

1. The City will be billed in advance for its local additional funds in the amount of \$1,700,000 which includes indirect costs and the materials test rate.

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.
4. The City will be billed in advance for its local funds, including indirect costs and materials test rate. The billing for the Project's construction (CN & CE phases) will be sent no more 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 State 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 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 State's Project Manager will inform the City 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 City comments and concerns about the additional costs and/or alteration in scope or design.
13. The State 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 State will contact the City 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/State Funds	State Matching Funds	City Matching Funds	City Additional Funds
Preliminary Engineering (PE)	n/a	n/a	n/a	n/a	n/a
Construction (CN)	\$15,230,445	\$13,530,446	\$0	\$0	\$1,700,000
Construction Engineering (CE)	n/a	n/a	n/a	n/a	n/a
Subtotal	\$18,300,000	\$16,700,000	\$0	\$0	\$0
IDC	\$217,859	\$217,859	\$0	\$0	\$0
Grand Total	\$18,517,859	\$16,917,859	\$0	\$0	\$1,700,000

The above costs are estimates and include inflation, current IDC, and materials test rate, which is included in the CN phase.

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%

ARTICLE VI. 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 10.41% for fiscal year 2020 (July 1, 2019 to June 30, 2020). If the work

occurs or extends into fiscal year 2021 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:

City of Missoula
Attn: Town Clerk/Treasurer
435 Ryman St.
Missoula MT 59802

- 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 resulting from this Agreement 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 Accessibility Design, United States Access Board Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way (2011 PROWAG), 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. Representatives
- a. City's Representative: The City's Representative for this Agreement shall be the City Mayor 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.
17. 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, Montana**

John Engen
Mayor

APPROVED AS TO FORM AND CONTENT:

Jim Nugent
City Attorney

Attest:

Name
Title

**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, & 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, national
origin, ancestry, age, disability mental or
physical, political or religious affiliations or
ideas, military service or veteran status

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. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
 - ii. Statement that 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 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, 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 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 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. 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.