Contract # 104597

Safe Routes to School Non-Infrastructure Contract
CFDA #20.205 – Safe Routes to School

This Contract is entered into between the State of Montana, Department of Transportation, Transportation Planning Division, 2701 Prospect Avenue, P.O. Box 201001, Helena, Montana (State) and City of Billings - Planning and Community Services Department, City Hall, 210 North 27th Street, Billings, MT 59101 (Grantee). Liaison for the State is Audrey Allums, Transit Supervisor. Liaison for the Grantee is Debi Meling.

The State, having received grant monies from the Federal Highway Administration (FHWA), through section 1404, SAFE ROUTES TO SCHOOL PROGRAM, and desiring to assist the Grantee, enters into the following contract with Grantee.

ARTICLE 1. PROJECT

SECTION 1.1 Purpose of Contract. This contract provides assistance for the Grantee to execute a Safe Routes to School Non-Infrastructure project in accordance to the application submitted to and approved by MDT.

SECTION 1.2 Scope of Project. Grantee shall undertake and complete the project as described in its application (Attachment 1). The Grantee shall use its best efforts to efficiently and economically complete the Project.

Conducting Safe Routes to School assessment for generating a community wide action plan to identify preferred routes of travel to 22 elementary schools in Billings.

SECTION 1.3 Period of Performance. This contract will be effective from July 1, 2009 to June 30, 2010.

SECTION 1.4 Cost of Project. The total cost of the **Non-Infrastructure** Project shall be $50,000.00. The cost of the Project shall be shared as follows:

100 Percent Federal	$ 50,000.00

State will make quarterly reimbursement payments to Grantee based upon the State's approval of reports, expense documentation, and invoices submitted by the Grantee.

SECTION 1.5 Purchase of Project Equipment. The State, on behalf of the Grantee, or the Grantee with the State's prior approval, shall purchase all Project equipment in accordance with applicable State law and the standards set forth by the Uniform Administration Requirement for Grant and Cooperative Agreement to State and Local Government (49 CFR Part 18). Project equipment shall be purchased in conformity with the latest approved Cost of Project as shown in Section 1.4.

SECTION 1.6 Title to Project Equipment. The Grantee shall hold title to Project equipment. The State shall be the first secured party. The State may enforce this provision through legal action to protect its security interests in Project equipment.

SECTION 1.7 Use of Project Equipment. The Grantee shall use Project equipment for service described in the Project Application. If any Project equipment is no longer needed for this service, the Grantee shall immediately notify the State and the State shall dispose of such Project equipment.

SECTION 1.8 Maintenance. During the contract period Grantee shall maintain the Project equipment and facilities at a high level of cleanliness, safety and mechanical soundness. In addition, all accessible features and equipment used by persons with disabilities must be maintained in operating condition. Equipment must be repaired promptly, and reasonable steps must be taken to continue serving persons with disabilities while the repairs are being made (reference 49 CFR, Subpart G, 37.161 and 37.163). The State reserves the right to rehabilitate any Project equipment covered under this contract, after proper application by Grantee and approval by the State.

SECTION 1.9 Insurance. During the Contract term, the Grantee shall maintain insurance or self-insurance (property damage and liability) adequate to protect the federal share portion of Project facilities and equipment. Grantee will furnish proof of such insurance for the State's approval.

SECTION 1.10 Records, Reports and Information Access.

1.10.1 Recordkeeping. The Grantee shall keep records regarding the use of Project property, compliance with the provisions of this Contract, the federal assurances, and such records as the State and the Federal Highway Administration (FHWA) may require, including financial statements, program operation data, contracts and other Project-related documents. If a third party has exclusive possession of any required information and refuses or fails to provide that information, the Grantee shall inform the State and set forth its efforts to obtain this information. Grantee shall maintain these records for at least three years after any final payment and all other matters pending under this Contract are closed.

1.10.2 Reporting. Grantee shall advise the State in writing of Project progress at such times and in such manner as the State and FHWA may require, but not less than quarterly.

1.11 Media. Acknowledge funding for this project is provided through the MDT in all publicity and earned media.

ARTICLE 2. DEFAULT AND TERMINATION

SECTION 2.1 Default. Nonperformance by the Grantee of any obligation imposed by this Contract, including noncompliance with the federal assurances in Articles 3 and 4, or reduction of local project cost funding, will constitute default.

SECTION 2.2 Termination. This Contract may be terminated by the State by serving a notice of termination on the Grantee. Termination may occur for either convenience or default. If termination is for convenience, the notice shall give the Grantee thirty days to wind down its activities under this Contract. If termination occurs due to default, the notice shall state the nature of the Grantee's default, and offer the Grantee ten (10) days for an opportunity to explain its nonperformance. If the State finds that the Grantee has a reasonable excuse for nonperformance, which is beyond the control of the Grantee, the State may set up a new work schedule and allow the completion of this Contract.

In any termination, the State will make its contractual payments proportionate to the work properly performed in accordance with this Contract to the time of termination. Grantee shall account for any Project property in its possession.

SECTION 2.3. Litigation. Controversy arising from this contract may result in litigation. Arbitration is not available. This Contract shall be governed by Montana law.

SECTION 2.4 Venue. In the event of litigation concerning this contract, venue shall be in the First Judicial District of the State of Montana, in and for Lewis and Clark County.

ARTICLE 3. MISCELLANEOUS

SECTION 3.1 Contract Modification. Any change to this contract will only be by written agreement of the Parties.

SECTION 3.2 Assignment and Subcontracting. The Grantee shall not assign any portion of the work to be performed under this contract, or execute any contract, amendment or change order thereto, or obligate Grantee in any manner with any third party with respect to Grantee's rights and responsibilities under this contract, without the prior written concurrence of the State.

SECTION 3.3 Subcontracts. The Grantee shall include in all subcontracts entered into pursuant to this Agreement a copy of this Contract, and the subcontract will make the provisions of this Contract a specific part of the subcontract. In addition, the Grantee shall include the following provisions in any advertisement or invitation to bid for any procurement under this contract:

Statement of Financial Assistance

This agreement is subject to a financial assistance contract between the Montana Department of Transportation, the U. S. Department of Transportation, and the Federal Highway Administration.

SECTION 3.4 Indemnification. The Grantee shall indemnify, defend, and hold harmless the State of Montana, its Department of Transportation, its employees and agents from and against all claims, demands, or actions from damages to property or injury to persons or other damage to persons or entities arising or resulting from the performance of this Contract.

SECTION 3.5 Settlement of Third Party Contract Disputes or Breaches. The term "third-party contract," as used in this Contract, is defined as a contract between the Grantee and its subcontractor in which the Grantee has procured a good and/or service commercially from the subcontractor. FHWA has a vested interest in the settlement of disputes, defaults, or breaches involving any federally assisted third party contracts. FHWA retains the right to a proportionate share, based on the percentage of the Federal share committed to the Project, of any proceeds derived from any third party recovery. Therefore, the Grantee shall avail itself of all legal rights available under any third party contract. The Grantee shall notify the State of any current or prospective litigation or major disputed claim pertaining to any third party contract. FHWA reserves the right to concur in any compromise or settlement of the Grantee's claim(s) involving any third party contract, before making Federal assistance available to support that settlement. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the Project account involved unless FHWA permits otherwise.

SECTION 3.6 Notice. All notices arising from the provisions of this Contract shall be in writing and given to the parties at the addresses listed above, either by regular mail or delivery in person.

SECTION 3.7 Agency Assistance. No assistance, other than provided for by this Contract, will be required, but may be provided at the discretion of State.

SECTION 3.8 Severability and Integration. If any part, or parts, of this contract are determined to be void, the remaining parts will remain valid and operative. This document, together with its schedules, attachments, and exhibits, represent the complete and entire understanding of the parties on its subject matter. No provision, express or implied, arising from any prior oral or written request, bid, inquiry, negotiation, contract, or any other form of communication, shall be a provision of this contract unless it is reduced to writing, signed by the parties, and attached to this document.

SECTION 3.9 Prohibited Interest. No employee, officer, board member or agent of the Grantee shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(1) The employee, officer, board member or agent;
(2) Any member of his or her immediate family;
(3) His or her partner; or
(4) An organization which employs, or is about to employ any of the above; has a financial or other interest in the firm selected for award. The Grantee's employees, officers, board members, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of sub-agreements.

SECTION 3.10 Interest of Members of or Delegates to Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom.

SECTION 3.11 Waivers. A party's failure to enforce any provision of this Contract shall not be construed as a waiver excusing the other party's future performance.

SECTION 3.12 Ineligible Bidders. Bidders or Suppliers whose names appear on the U. S. Comptroller General's List of Ineligible Contractors are not eligible for award of, or participation in, any contract that may be awarded as a result of this contract. Submission of a bid by any bidder constitutes certification that he or any subcontractor or suppliers to him, on this proposed contract, if one is awarded, are not on the Comptroller General's List of Ineligible Contractors. A subsequent determination by FHWA that a bidder knowingly made any misstatement of facts in this regard will be cause for immediate disqualification, suspension or termination of the contract for cause.

SECTION 3.13 Prohibition Against Use of Federal Funds for Lobbying. The Grantee or its subcontractor shall not use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation or appropriations pending before Congress or a state legislature.

SECTION 3.14 Employee Political Activity. The provisions of 5 U.S.C. 1501-1508, 7324-7326 (the "Hatch Act"), and implementing regulations set forth in 5 C.F.R. Part 151 are applicable to State and local agencies and their officers and employees to the extent covered by the statute and regulations. The "Hatch Act" restricts the political activity of an individual principally employed by a State or local executive agency in connection with a program financed in whole or in part by Federal loans, grants, or cooperative agreement.

SECTION 3.15 False or Fraudulent Statements or Claims. The Grantee acknowledges that, should it make a false, fictitious, or fraudulent claim, statement, submission, or certification to the State or Federal Government in connection with this project, MDT reserves the right to pursue the procedures and impose on the Grantee the penalties of 18 U.S.C. 1001, 31 U.S.C. 3801, et seq., and/or 49 U.S.C. 5307(n)(1), as may be deemed by MDT to be appropriate.

SECTION 3.16 Debarment and Suspension. The Grantee shall obtain from its third party contractors certifications required by Department of Transportation regulations, "Government-wide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29, and otherwise comply with the requirements of those regulations.

SECTION 3.17 No State Obligations to Third Parties. The State shall not be subject to any obligations or liabilities to any third party in connection with the performance of this Project without the specific written consent of the State and FHWA. Neither the concurrence in nor the approval of the award of this contract or any subcontract, or the solicitation thereof, nor any other act performed by the State under this contract shall constitute such consent.

SECTION 3.18 Federal Changes. Grantee shall at all times comply with all applicable FHWA regulations, policies, procedures and directives.

SECTION 3.19 Authority. The Grantee warrants that it has the lawful authority to enter this contract, and that it has taken all actions and complied with all procedures necessary to execute the authority lawfully in entering this contract, and that the undersigned signatory for Grantee has been lawfully delegated the authority to sign this contract on behalf of Grantee.

SECTION 3.20 Compliance with Laws. Some of the clauses contained in this contract are not governed solely by Federal law, but are significantly affected by State law. The laws and regulations cited in this contract are not all-inclusive of those which may apply to the successful completion of this contract. The Grantee understands that it is its responsibility to learn what federal, state and local laws and regulations will apply to its operation under this contract, and that Grantee is solely responsible for its lawful compliance with them.

SECTION 3.21 Audit Requirement. The Grantee shall perform an audit in compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 et seq. and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The Grantee will provide the MDT Transit Section with a copy of the audit report for each fiscal year FHWA funds are received by the Grantee.

ARTICLE 4. NON-DISCRIMINATION NOTICE

During the performance of this contract, City of Billings - Planning and Community Services Department (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 Sec. 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 Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or 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, SEC. 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.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed.

CITY OF BILLINGS

BY: Chuck Wall, City Administrator

DATE: June 9, 2009

MONTANA DEPARTMENT OF TRANSPORTATION

BY: _____
Lynn Zanto, Administrator

DATE: 6/17/09

Approved for Legal Content by: _____

Approved for Civil Rights Content by: Bill Anderson