

RECREATIONAL TRAILS PROJECT AGREEMENT #RTP FY2010 – 03

THIS AGREEMENT, entered into this **28th** day of **December, 2009** by and between FISH, WILDLIFE AND PARKS, the governmental agency of the State of Montana designated to act for the State of Montana, for the purpose of implementing the Recreational Trails Program, with its principal place of business at Helena, Montana, hereafter called the "Department," and City of Billings, hereinafter referred to as the "Sponsor".

WITNESSETH:

WHEREAS, the Sponsor desires to conduct a trail project called Swords Park Trail – Phase Two for the purpose of public outdoor trail recreation, and to comply with the reimbursement requirements as a recipient of the amount approved by the Department for this trails project; and,

WHEREAS, it is the desire of the Department to administer the grant to the Sponsor of said project and to determine satisfactory completion and performance;

NOW, THEREFORE, in consideration of the covenants to be performed by each party on behalf of the other, as hereinafter set forth, it is hereby understood and agreed by and between the parties hereto as follows:

1. That the Sponsor will conduct the following described trail project in accordance with the plans and specifications approved with Project Application submitted to the Department.

This project will consist of development of a connector trail through the east end of Swords Park.

2. That the Sponsor will initiate promptly and diligently complete said project on or before **October 15, 2012**. In the event that the Sponsor desires to extend the contract completion date for good cause (for a maximum of one year), be advised that the Department has a Contract Extension Form that first needs to be completed and signed by both parties. A letter requesting an extension should be received at FWP's office in Helena no later than 6 months prior to original contract completion date.

3. The Sponsor guarantees that it has funds necessary for the implementation of this project, that it will pay for said project, and will request reimbursement for allowable costs only. Upon receipt of satisfactory billing documentation from the Sponsor, the Department agrees to reimburse the Sponsor the allowable funds expended by the Sponsor. The Department will then submit the grantees' documentation to the Federal Highways Administration for reimbursement. The state share approved at this time shall not exceed **\$28,000**. The sponsor will provide an amended Part B, Project Cost Information, from their RTP application showing adjustments based upon the grant amount identified herein, and explaining any changes in the scope of the project in the description text following said amended Part B. The amended Part B, if applicable, will be completed by the Sponsor and returned to the Department with the signed Project Agreement.

4. The National Recreational Trails Fund is an 80% recreational trails program/20% Sponsor cost-share program. At the time/s of request for reimbursement by the Sponsor, the Sponsor will account for Sponsor funds expended and value of in-kind contributions, with the Sponsor's share being not less than 20% of costs incurred.

5. It is understood and agreed by both parties hereto that the mandates of the Recreational Trails Program are hereby incorporated into this Agreement by this reference and that the same shall be binding upon both parties hereto, and that modification of this Agreement, and special terms and conditions to the project may be established by the Department upon agreement by the Department and the Sponsor.

6. The Sponsor agrees to provide the Department with all reports and certifications, including accounting reports, receipts and vouchers as requested and in the form and upon the dates requested either prior to commencement of the project or at any time during the project. The Sponsor also agrees to follow accounting procedures satisfactory to the Department and to provide, upon request at any time during the project, a financing commitment indicating that continued funds will be available for completion of the project as proposed in the referenced plans and specifications, and to reimburse the Department for any and all overpayments on this project. In addition, the Sponsor agrees to allow Federal, Legislative, Department or State Auditors access to its records for the purpose of determining that this grant is administered in accordance with grant terms and conditions and, upon request, to provide the Department with a copy of any such audit.

7. Requests for reimbursement by the Sponsor may be made **no more than two times per year** or at project completion. Financial reimbursement will be contingent upon the Sponsor satisfying the Department that expenditures are consistent with the project agreement. Reimbursement information may be found on the FWP website at <http://fwp.mt.gov/recreation/grants/rtp/reimbursement.html>).

8. Purchase of Goods or Services. Goods and services for trails projects typically include purchase of such things as equipment, equipment parts, equipment repairs, trailhead or trailside facilities, signs, rental of equipment or facilities, contracted labor for grooming, maintaining, rehabilitating, planning, engineering, developing or building trails.

- a. Goods or Services costing \$5,000 or less may be purchased without bids. However, it is recommended that price comparisons be made to ensure the best buy.
- b. Goods or services costing \$5,000 to \$25,000 require limited solicitation. This should include cost proposals, by fax or written format, from at least three prospective vendors if possible. If there are fewer than three potential vendors available, that must be documented. The sponsor must forward documentation of this limited solicitation, results and a copy of the contract/agreement to the Trails Programs Office, FWP prior to any request for reimbursement.
- c. For goods or services costing more than \$25,000, the sponsor must solicit for bids or proposals. This includes notifying prospective vendors directly and advertising in a publication of area significance and allowing at least 30 days for submittal of proposals. The sponsor must forward documentation of this solicitation, results and a copy of the contract/agreement to the Trails Programs Office, FWP prior to any request for reimbursement.
- d. For any equipment purchased with Recreational Trails Program funds, that equipment may only be used for the specific purposes identified in the project application and agreement for the following five years (see Condition 8f), and the grant sponsor must provide a maintenance schedule for that equipment prior to requesting reimbursement for purchase or operation of that equipment. Prior to purchase, the grant sponsor, in consultation with the Department, must produce a cost-benefit analysis to determine if renting or leasing equipment would provide a cost advantage over purchase.

- e. No employee, officer or agent of the Sponsor shall participate in the selection, award or administration of a contract supported by Recreational Trails Program funds if a real or apparent conflict of interest would be involved. Goods or services may not be purchased by the Sponsor from any business in which the Sponsor, an officer or agent has a financial or other interest.
 - f. Equipment purchased with Recreational Trails Program funds will not be used for personal gain or purposes. Equipment that costs more than \$1,000 may not be traded or sold by the Sponsor in less than five (5) years without prior written approval by the Department. Any income received by the Sponsor from the sale of equipment purchased with Recreational Trails Program funds must be reinvested in the project for which the equipment was purchased or a similar project that benefits public trails.
9. The Department may unilaterally terminate this agreement upon refusal by the Sponsor to allow access to records necessary to carry out the legislative audit and analysis function set forth in Title 2, Section 7, Part 5, Montana Codes Annotated.
10. The Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
11. The Sponsor, 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.
12. The Sponsor further agrees to permit inspection of the project by the Department or its employees or agents at any and all reasonable times during or after project completion.
13. The Sponsor further agrees that this trail project will be available to the general public.
14. It is understood and agreed by both parties that a failure to comply with any of the points listed above can result in a voiding of this Agreement and a loss of further Recreational Trails Program assistance.
15. The Sponsor further agrees to protect, defend, and save the state, its elected and appointed officials, agents and employees, while acting within the scope of their duties as such, harmless from and against all claims demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Sponsor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of service performed or omissions of services or in any way resulting from the acts or omissions of the Sponsor and/or its agents, employees, subcontractors, representatives, or the state under this Agreement.

IN WITNESS WHEREOF, the Department has caused its name to be subscribed thereunto duly authorized and the Sponsor has caused its name to be subscribed by its proper officers, thereunto duly authorized, on the day and year first above written.

BY: _____
FISH, WILDLIFE and PARKS

DATE _____

BY: _____
PROJECT SPONSOR

DATE _____

(Sponsor's Federal I.D.# _____)