

CTEP PROJECT AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Montana, acting by and through its Department of Transportation, hereinafter called the "State," and the City of Billings, hereinafter called the "City". This Agreement is effective on the date of the final signature by the State.

WITNESSETH THAT:

WHEREAS, the City proposes to develop and construct a Community Transportation Enhancement Program (CTEP) project, Control Number 7547, titled N BROADWAY SIDEWALK-BLNGS (hereinafter the "project"); and,

WHEREAS, the State and the City recognize the need to develop and construct the project, and are willing to share in its costs in accordance with this agreement; and,

WHEREAS, in accordance with the State's agreement with the Federal Highway Administration (FHWA) of the U.S. Department of Transportation, the State must ensure that certain requirements are met in order for the State to fulfill its obligations to the FHWA and for the project to be eligible for federal funds. Accordingly, the State includes federal requirements, which are among those hereinafter set forth, for this project, and the City agrees to them, and,

WHEREAS, the estimated cost of the project's development and construction is \$207,397; and,

WHEREAS, the financial participation for the project development and construction will in part be with federal-aid funds made available in federal fiscal 2011; and,

WHEREAS, the federal-aid funds provided are described in the Catalog of Federal Domestic Assistance (CFDA), number 20.205, Highway Planning and Construction; and,

WHEREAS, it is understood that all costs associated with the project in excess of these federal-aid funds will be financed by the City; and,

WHEREAS, this document must be executed and submitted to the State before the project development and construction process will be authorized to start; and,

NOW, THEREFORE, in consideration of the covenants herein contained, the parties agree that:

1. The City will develop a CTEP project described as: the construction of approximately 300 lineal feet of sidewalk, curb and gutter, a planter, and historic lighting.
2. The project will be located in Billings, on the east side of North Broadway Street between 1st Avenue North and Montana Avenue.
3. The purpose of this project is to provide a safe and convenient bicycle and pedestrian facility.
4. The initial federal-aid program to be requested for the development and construction of this project, by federal-aid account, is as follows:

Federal-Aid Program Account by Project Phase (Maximum CTEP Share)

[9102] Preliminary Engineering (86.58% CTEP) (including environmental documentation)	\$	-0-
[9202] Right-of-Way/Easement Acquisition (86.58% CTEP)	\$	-0-
[9302] Incidental Construction (64.93% CTEP) (utility relocation involvement)	\$	-0-
[9402] Construction Engineering (86.58% CTEP) (including contract administration and inspections)	\$	-0-
[9502] Construction (86.58% CTEP)	\$	207,397
Total	\$	207,397

City of Billings	Project	CTEP Funds	Local Match	Additional Contribution
Direct Costs	\$ 207,397	\$ 179,564	\$ 27,833	\$ -0-
TOTAL	\$ 207,397	\$ 179,564	\$ 27,833	\$ -0-

NOTE: Above table does not include indirect costs. Indirect costs will be applied to the CTEP fund share at the rate corresponding to the time the reimbursements are made.

5. The City will be responsible for the \$27,833 local match. The Federal cost participation (CTEP funds) will be \$179,564 of the estimated total project cost of \$207,397. The City will be responsible for 100% of all costs exceeding the proposed \$207,397 that may be required to complete the project.

6. The parties understand and agree that this agreement is subject to the requirements of Section 17-1-106, MCA, which requires the State to fully recover indirect costs (IDC) from the City and any other participating parties. The current IDC rate is 13.35%. The parties further understand and agree that as of October 1, 2009 the City's share of the IDC will be paid by the State per subsection (3) of Section 17-1-106, MCA. If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rate may change during the life of the project.

7. The City will develop and prepare all of the necessary design plans, specifications, estimates and contract documents for the project in accordance with the CTEP Manual. The selection and retention of any individual or firm to provide or furnish any engineering or design related services shall be based upon qualifications in accordance with the CTEP Manual's Consultant Services procedures.

8. The City will solicit for competitive bids and award a contract to construct the project. The solicitation for the construction contract may be by competitive bid or limited solicitation, so long as the cost does not exceed \$50,000; should the project's construction cost exceed \$50,000, it must be by competitive bid. The City will administer any construction contract and provide the supervision, inspection and documentation required to ensure the project is completed satisfactorily. The State will perform a final project review to ensure substantial compliance with project plans, specifications and estimates.

9. The City and any consultant and/or contractor it may employ in pursuit of project completion will comply with applicable Equal Employment Opportunity (EEO) requirements, Disadvantaged Business Enterprise (DBE) goals, Americans with Disabilities Act (ADA) and Federal Labor Requirements.

10. The City will provide documentation necessary to comply with applicable environmental requirements, including the National Environmental Policy Act (NEPA), Section 106 of the

National Historic Preservation Act (NHPA) and Section 4(f) of the DOT Act.

11. The City will complete and submit the applicable supporting documentation to the State for review and concurrence prior to beginning the next step in the project's development or construction process, as identified in the CTEP Manual.
12. The City will allow inspection of all work and project-related records by the personnel or agents of the State and FHWA.
13. Cities subject to the authority of the Montana Single Audit Act will secure an independent audit in compliance with OMB Circular A-133 and submit a copy to the Montana Department of Administration, Local Government Services Bureau, PO Box 200547, Helena, MT, 59620-0547.
14. Except for any suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts or omissions or misconduct of State employees, the City agrees that it will protect, indemnify, and save harmless the State and Department of Transportation against and from all claims, liabilities, demands, causes of action, judgments (with any costs and fees that might be awarded), and losses to them from any cause whatever from the project, and including any suits, claims, actions, losses, costs or damages of any kind, including the State and Department's legal expenses, made against the State or Department by anyone arising out of, in connection with, or incidental to the project and its construction or use or maintenance.
15. The City will retain project-related records and documents for a period of three years after the closing of the project.
16. The City may submit a claim once a month detailing items and quantities of acceptable work completed that period to the CTEP Office for the project development and/or construction costs incurred. The request will be accompanied by documentation substantiating the amount requested and identifying the applicable federal share.
17. This agreement shall become effective upon execution by both parties. It may be modified only by prior written agreement of both parties.
18. The City will service, maintain, and pay the cost of operating the project described in this agreement.
19. During the performance of this Agreement the City, 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 City 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 City, 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 City 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 City 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 City of the City's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The City 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 City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the City's noncompliance with the nondiscrimination provisions of this Agreement, the State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
 - (a) Withholding payments to the City under the Agreement until the City complies, and/or
 - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: The City 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 City 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 City is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the City may request the State to enter into the litigation to protect the interests of the State, and, in addition, the City 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 City 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 City will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) The City will incorporate or communicate the intent of the following statement in

all publications, announcements, video recordings, course offerings or other program outputs: **"The City 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 City. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the City."**

- (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 City (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

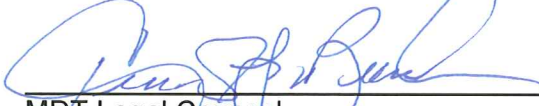
The City, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The City shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the City to 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 Department's authorized representative has signed on behalf of the State of Montana, and the Mayor of the City of Billings has signed and affixed hereto the seal of the City.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

BY _____, 2011

APPROVED FOR LEGAL CONTENT



MDT Legal Counsel

CITY OF BILLINGS

ATTEST-CITY CLERK

MAYOR

_____ By _____

I, _____, Billings City Clerk, hereby certify that this agreement was regularly adopted by the City Council at a meeting held on the _____ day of _____, 20____, and that the Council authorized the Mayor to sign this agreement on behalf of the City.

[OFFICIAL SEAL]

City Clerk