

**PROJECT SPECIFIC AGREEMENT - GENERAL**

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".

WITNESSETH THAT:

WHEREAS, the City proposes to develop and construct a Community Transportation Enhancement Program (CTEP) project, STPE 1099(47), titled JACKSON ST SIDEWALKS-BILLINGS (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, the State and Federal Highway Administration (FHWA) will not participate in the development and construction of the project unless the City agrees to the conditions set forth; and,

WHEREAS, the estimated cost of the project's development and construction totals \$145,000; and,

WHEREAS, the financial participation for the project development and construction will in part be with federal aid funds; 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 design and construction of sidewalks, curb and gutter, drive approaches and accessibility ramps. All construction will be in accordance with current design standards and ADA requirements.
2. The project is on the state-maintained system and the location is described as follows: the project is located on both sides of Jackson Street (U1019) between Kratz Lane and State Avenue.
3. The purpose of this project is to provide a safe and convenient 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 (maximum FHWA match rate) Total by account**

[9102] Preliminary Engineering (86.58%) (including environmental documentation)	\$	7,250
[9202] Right-of-Way/Easement Acquisition (86.58%)	\$	-0-
[9302] Incidental Construction (64.93%) (utility relocation involvement)	\$	-0-
[9402] Construction Engineering (86.58%) (including contract administration and inspections)	\$	14,500
[9502] Construction (86.58%)	\$	<u>123,250</u>
<b>Total</b>	<b>\$</b>	<b><u>145,000</u></b>

	<u>Project</u>	<u>CTEP Funds</u>	<u>Local Match</u>	<u>ADD. Contribution</u>
City of Billings	\$ 145,000	\$ 69,515	\$ 10,775	\$ 64,710
<b>TOTAL</b>	<b>\$ 145,000</b>	<b>\$ 69,515</b>	<b>\$ 10,775</b>	<b>\$ 64,710</b>

5. The general method of development includes: the City will use its own forces for preliminary engineering, contract bid document preparation and construction engineering. Construction will be by competitive bid. The state will perform a final inspection to ensure substantial compliance with project plans, specifications and estimates.
6. 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.
7. 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.
8. 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 Guidelines.
9. The City will allow inspection of all work and project related records by the personnel or agents of the State and FHWA.
10. 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.
11. The City will retain project-related records and documents for a period of three years after the closing of the project.
12. The City will be responsible for \$75,485 and Federal participation will be \$69,515 of the estimated total project cost of \$145,000. The City will be responsible for 100% of the costs exceeding the proposed \$145,000, required to complete the project.
13. The City may submit a claim once a month detailing items and quantities of acceptable work completed that period to the CTEP Engineering Coordinator 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.

14. This agreement shall become effective upon execution by the State and City. It may be modified only by written mutual agreement of both the City and the State.
15. The City will service, maintain, and pay the cost of operating the project described in this agreement.
16. 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, 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 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, 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 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 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, § 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 Director of Transportation or his authorized representative has signed his name on behalf of the State of Montana and the Mayor of the City of Billings has signed his/her name and affixed hereto the seal of the City.

**STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION**

Jim Lynch  
Director of Transportation

BY [Signature]  
Chief Engineer, Engineering Division

July 21, 2005

APPROVED FOR LEGAL CONTENT

[Signature]  
MDT Legal Counsel

**CITY OF BILLINGS**

ATTEST-Clerk

[Signature]  
Deputy City Clerk

Mayor

By [Signature]

I, Susan Shuhler, Billings <sup>Deputy</sup> City Clerk, hereby certify that this agreement was regularly adopted by the Billings City Council at a meeting held on the 22<sup>nd</sup> day of August, 2005, and that the Council authorized the Mayor to sign this agreement on behalf of the City.

[OFFICIAL SEAL]

[Signature]  
City Clerk <sup>Deputy City Clerk</sup>

