

**Memorandum of Agreement
Between the
Montana Department of Transportation (MDT) and the City of Billings
for Air Quality Equipment – Project UPN 6770 - CM STWD (110)
CFDA# 20.205**

This Agreement made and entered into by and between the Montana Department of Transportation (MDT) and the City of Billings is to address the need for improving air quality by reducing PM-10 Particulate matter in Billings. The acquisition of equipment identified in this Agreement provides the City of Billings the means to reduce PM-10 particulate matter and it is understood the equipment will be used solely for this purpose. The parties to this Agreement agree to the following:

1. The purpose of this Agreement is to set forth the terms and conditions for the MDT to acquire, and then transfer title of one (1) Mechanical Sweeper.

Item Description: (1) Mechanical Sweeper – Broom Bear	
Total Cost inclusive of Indirect Cost:	<u>\$203,141</u>

2. This agreement is effective for this equipment purchase for the useful life of the equipment as per Title 49 CFR Subtitle A. Actual award is contingent on FHWA funding.

3. It is understood and agreed between the parties that: Section 17-1-106. MCA requires any state agency, including MDT that receives non-general funds to identify and recover its indirect costs. These costs are in addition to direct project costs. MDT's indirect cost rate is determined annually as a percentage of the project's direct costs to cover the projects share of MDT's indirect costs as defined by 2 CFR Part 225 (formerly OMB Circular A-87). MDT's current indirect cost rate is 9.64% for this project.

For this project, MDT billings to the City of Billings will include a charge for the indirect costs at the current fiscal year indirect cost rate, which amount will be applied toward the total project contribution of the City. If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the project.

4. The acquisition of the equipment shown above under item (1) will be funded with Montana Air and Congestion Initiative (MACI) program funds made available to the City of Billings and non-federal local match. The financial responsibility of the parties in this Agreement is:

MDT	MACI Funds (86.58%)	\$175,879
City of Billings	Non-Federal match (13.42%)	<u>\$ 27,262</u>
	Total	\$203,141

5. Method of payment – MDT will invoice the City of Billings for the non-federal matching funds shown under item (4) once the equipment vendor has been selected and no more the 60-days prior to delivery. The local agency will submit payment to MDT within thirty (30) days of billing. If payment is not made within that 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. If the City of Billings does not make timely payment, MDT may not participate in any future funding agreements with the City of Billings until full payment, including interest, is received. The equipment will not be released by MDT until these requirements are met. The contact for billing, accounting and change order questions for the Local Agency shall be:

Vern Heisler, Deputy Public Works Director, City of Billings, 2224 Montana Avenue, Billings, MT 59101

6. Receipt of Equipment – the equipment listed under item (1) will be delivered by the vendor to MDT in Helena, MT. The City of Billings agrees to receive the equipment from MDT Equipment Shop located in Helena, MT, and to bear the cost of transporting the equipment to their locale. The City of Billings agrees to activate the warranty and title of the equipment upon receipt from MDT. The City of Billings agrees to maintain the project equipment at a high level of safety and mechanical soundness.

7. Retention /Disposal of Equipment – The City of Billings agrees to retain and maintain the equipment for its stated program purposes for the useful life of the equipment. After its useful life, any income generated by the lease, sale, or other use of equipment acquired with federal funds, shall be on the basis of fair market value. Such income shall be used on this Congestion Mitigation and Air Quality (CMAQ) project or any other Title 23 (transportation) eligible project. The City of Billings agrees to record the receipt of the proceeds of the lease, sale or other use of the equipment in the City of Billings accounting system, showing that the funds are restricted for use in a subsequent acquisition of equipment compatible with the program purpose. The City of Billings agrees to maintain records of the disposition of the equipment for a period of three years beyond the useful life of the equipment, failure to comply with this may impact the City of Billings future program eligibility.

8. Access and Retention of Records – The City of Billings agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine compliance with this Agreement. The City of Billings agrees to create and retain records supporting this Agreement for a period of three years after the completion date of this Agreement or the conclusion of any claim, litigation or exception relating to this Agreement taken by the State of Montana or a third party.

9. Assignment, Transfer and Subcontracting – The City of Billings shall not assign, transfer or subcontract any portion of this Agreement without the express written consent of the State.

10. Choice of Law and Venue – In the event of litigation concerning this Agreement, venue will only be in District Court of the First Judicial District of the State of Montana in and for the County of Lewis and Clark. This Agreement will be interpreted according to Montana law.

11. Agreement Modification – Any change to this Agreement will only be by written agreement between parties.

12. Indemnification - The City of Billings agrees to protect, defend, and save the State, MDT, 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, causes of action of any kind or character, including the costs of defense thereof, arising in favor of the City of Billings' employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of the City of Billings' performance of this Agreement, including any use of the equipment purchased under this Agreement.

13. Severability and Integration – If any single part or parts of this Agreement are determined to be void, the remaining parts will remain valid and operative. This Agreement, as written, expresses the total, final and only agreement of the parties relevant to its subject matter. No provision, expressed 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 Agreement unless specifically provided within the written terms herein.

14. Compliance with Laws – The City of Billings, in the performance of this Agreement, fully comply with all applicable federal, state or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Attachment A, Non-Discrimination Notice, is incorporated into

this Agreement and during the performance of this Agreement, The City of Billings for itself, its assignees and successors in interest, agrees to adhere to the contents of Attachment A.

15. Termination – The parties may mutually terminate this Agreement in writing at any time. MDT, at its sole discretion, may terminate or reduce the scope of this Agreement if available funding is reduced for any reason. MDT may terminate this Agreement in whole or in part at any time City of Billings fails to perform the Agreement terms as set forth.

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

STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION

BILLINGS CITY COUNCIL
BILLINGS, MONTANA

By: _____
Lynn Zanto
Planning Administrator
Dated: _____, 2012

By: _____
Thomas W. Hanel
City of Billings Mayor
Dated: _____, 2012

Attest: _____
City Clerk

Approved for Legal Content

By: _____ Date _____, 2012
MDT Legal Services

By: _____ Date _____, 2012
City of Billings Attorney (optional)

Attachment A

NON-DISCRIMINATION NOTICE

During the performance of this Agreement, and the local agency named in this agreement, City of Billings, (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 the 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