

MONTANA TRANSPORTATION ALTERNATIVES PROGRAM
PROJECT FUNDING AND MAINTENANCE 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".

WHEREAS, the City was successful in obtaining Montana Transportation Alternative (TA) funds to develop and construct ADA compliant multi-use paths and curb ramps in Billings on the north side of Broadwater Avenue between Shiloh Road and Zimmerman Trail through TA project UPN 8701, titled BROADWATER AVE PATH – BILLINGS (hereinafter the "Project"); and,

WHEREAS, the estimated cost of the project's development and construction is not to exceed \$421,470 to be financed by the State using TA funds and State matching funds in the amount of \$421,470; and,

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

1. The State will design, advertise for bid and let and award a project to construct ADA compliant multi-use paths and curb ramps located in Billings on the north side of Broadwater Avenue between Shiloh Road and Zimmerman Trail.
2. The City contact for project related questions shall be:
Debi Meling, City Engineer
City of Billings
2224 Montana Avenue
Billings, MT 59101
406-657-3097
melingd@ci.billings.mt.us
3. The State Contact for project related questions shall be:
Mike Wherley
Montana Department of Transportation
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001
406-444-4221
mwherley@mt.gov

4. The parties understand that it is possible that the estimated cost of the project may be exceeded once the project is begun. The State will cover cost overruns up to 10%. If costs

exceed \$421,470 by more than 10%, the State will discuss options for addressing the overruns, including but not limited to, alternative designs or reduction in the scope of the project. The State's Project Manager will inform the City's point of contact beforehand, and as early as possible, of anything that appears will result in a cost increase.

5. Upon completion of the project by the State and its contractor, the City agrees that upon completion of the project it will service, maintain, and pay the cost of operating the project described in this agreement.

6. The City further agrees that it will defend, protect and indemnify the State for any claim or loss arising out of, due to or allegedly due to the failure of the City to maintain the project as completed; the State agrees that it will protect defend and indemnify the City for any claim or loss arising out of, due to or allegedly due to the design or construction of the project under the State's control.

7. Access and Retention of Records – The City agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine compliance with the Agreement.

The City agrees to create and retain records supporting this Agreement for a period of three years after the completion date of the Agreement or the conclusion of any claim, litigation or exception relating to the Agreement taken by the State of Montana or a third party.

8. 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.

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

10. 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 communications shall be a provision of this Agreement unless specifically provided within the written terms herein.

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

BROADWATER AVE PATH - BILLINGS
UPN 8701

12. Compliance with Laws - The City shall, at all times during the performance of its obligations of this Contract strictly adhere to all applicable local, state and federal laws and regulations, including but not limited to: Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1972, the Education Amendments of 1972, the Age Discrimination Act of 1975, the Americans With Disabilities Act, including Title II, Subtitle A, 24 U.S.C. Sec. 12101, et seq., all rules and regulations applicable to these laws prohibiting discrimination based upon actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, gender identity or expression and handicap and with Exhibit A, attached hereto and incorporated by reference.

13. Upon completion of the project, and acceptance by the State, the State shall provide the City with date of completion and acceptance, and the total project cost.

BROADWATER AVE PATH - BILLINGS
UPN 8701

IN WITNESS WHEREOF, the Department's authorized representative has signed on behalf of the State of Montana, and the City Administrator of the City of Billings has signed and affixed hereto the seal of the City.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

By _____, 2014
MT Dept. of Transportation

APPROVED FOR LEGAL CONTENT



MDT Legal Counsel

CITY OF BILLINGS

ATTEST-CITY CLERK

CITY ADMINISTRATOR

[OFFICIAL SEAL]

**EXHIBIT A
NON-DISCRIMINATION NOTICE**

During the performance of this Agreement, the City (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."**

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

Attachment A Project Location Map

