

**MEMORANDUM AGREEMENT
BETWEEN
MONTANA DEPARTMENT OF TRANSPORTATION (MDT), PO Box 201001, Helena MT
59620-1001, and City of Billings, MET Transit, 1705 Monad Rd, Billings, MT 59101**

TransADE

Transportation Assistance for Senior Citizens and Persons with Disabilities (MCA 7-14-112)

This agreement made and entered by and between the Montana Department of Transportation (MDT) and City of Billings (RECIPIENT). Liaison for the State is David Jacobs, Transit Supervisor. Liaison for the Recipient is Lynne Arnold. The parties to this agreement agree to the following:

1. The purpose of this agreement is to set forth the terms and conditions for MDT Transit to provide operating funds pursuant to 49 USC 5311 to counties, incorporated cities and towns, reservations, transportation districts, or nonprofit organizations for transportation services to persons at least 60 years of age and to persons with disabilities. The funds cannot be used to purchase capital items and must supplement any operating funds already provided by the local government and/or agency for public transportation activities.
2. This agreement is effective during **SFY 2018 (JULY 1, 2017 - June 30, 2018)** and shall terminate on June 30, 2018, or upon earlier completion of all terms of this agreement.
3. Funding – MCA 15-68-820 states that twenty-five percent of the revenue collected on the base rental charge for rental vehicles must be deposited in the state special revenue fund for senior citizens and persons with disabilities transportation services account.
4. Process for payment - RECIPIENT agrees to submit an annual financial statement showing the amount expended to support transportation services to persons at least 60 years of age and to persons with disabilities.
5. Method of payment - MDT agrees to review the annual expense reports and issue reimbursement payment for approved expenses to the RECIPIENT until the total amount of \$64,442.00 to be used for RECIPIENT'S public transportation services (operating funds or matching funds) is depleted, or until the June 30th end of the fiscal year, whichever occurs soonest. MDT will inform the provider of the amount remaining with each reimbursement. RECIPIENT agrees that if the total amount awarded for each fiscal year is not expended by RECIPIENT the remaining awarded funds will revert to the state special revenue account for future award to any applicant.
6. Access and Retention of Records - RECIPIENT agrees to provide the state, Legislature Auditor, or their authorized agents access to any 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.
7. 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.
8. Agreement Modification - Any change to this Agreement will only be by written agreement between parties.
9. Assignment, Transfer and Subcontracting - RECIPIENT shall not assign, transfer or subcontract any portion of the contract without the express written consent of MDT.
10. Indemnification - The parties agree that MDT's only role in this Agreement is to provide payment for the public transportation system. RECIPIENT 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 including attorneys' fees, arising in favor of RECIPIENT employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of RECIPIENT or MDT's performance of this Agreement, including any use for public transportation activities under this Agreement.

11. 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 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.
12. Compliance with Laws - RECIPIENT must, 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, RECIPIENT for itself, its assignees and successors in interest, agrees to adhere to the contents of Attachment A.
13. 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. Either party may terminate this Agreement in whole or in part at any time the other party 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**

CITY OF BILLINGS

By: _____

By: _____

Lynn Zanto, Administrator

Printed Name: _____

MDT-Rail, Transit and Planning Division

Title: _____

Dated: _____ 20__

Dated: _____ 20__

APPROVED FOR CIVIL RIGHTS CONTENT

By: Michele Asby

Date: June 27 2017

MDT Civil Rights Bureau

APPROVED FOR LEGAL CONTENT

By: Carol Stoll Morris

Date: June 26 2017

MDT Legal Services

RECIPIENT LEGAL REVIEW (optional)

By: _____

Date: _____ 20__

**MDT NONDISCRIMINATION
AND
DISABILITY ACCOMMODATION NOTICE**

Montana Department of Transportation ("MDT") is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter "protected classes") by its employees or anyone with whom MDT does business:

Federal protected classes

Race, color, national origin,
sex, sexual orientation, gender identity,
& Limited English Proficiency

State protected classes

Race, color, national origin, parental/marital status,
pregnancy, childbirth, or medical conditions age, disability,
related to pregnancy or childbirth, religion/
creed, social origin or condition, genetic
information, sex, sexual orientation, gender
identification or expression, national origin,
ancestry, age, disability mental or physical, political
or religious affiliations or ideas, military service or
veteran status

For the duration of this contract/agreement, the PARTY agrees as follows:

(1) Compliance with Regulations: The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Non-discrimination:

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
 - ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
 - iii. Contact information for PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
 - iv. Information on how to request information in alternative accessible formats.
- c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.

(3) Participation by Disadvantaged Business Enterprises (DBEs):

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml
- b. By signing this agreement the PARTY assures that:

The contractor, 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.
- c. PARTY must include the above assurance in each contract/agreement the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(6) Sanctions for Noncompliance: In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

(7) Pertinent Non-Discrimination Authorities:

During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Federal

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

State

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

(8) Incorporation of Provisions: The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.