



**Land and Water Conservation Fund Grant Agreement  
Between State of Montana and Subrecipient**

THIS AGREEMENT ("Agreement"), entered into this 24th day of June, 2019, by and between MONTANA FISH, WILDLIFE & PARKS, the governmental agency of the State of Montana designated to act for the State of Montana for the purpose of implementing the "Land & Water Conservation Fund Act of 1965," with its principal place of business at 1420 East Sixth Avenue, Helena, Montana, ("Department"), and the City of Billings in Montana, a Subrecipient of the State of Montana ("Subrecipient") (collective the "Parties" or a "Party").

The purpose of this Agreement is to Construct an ADA Playground as outlined in the Subrecipient Agreement Cover Form (Appendix A). The Subrecipient Cover Form is hereby incorporated into and made part of this Agreement.

**WITNESSETH:**

WHEREAS, the Subrecipient desires to construct the improvements cited herein in Billings, Montana, for the purpose of public outdoor recreation, and to qualify for reimbursement of a portion of the cost of said construction project under the "Land & Water Conservation Fund Act of 1965," 78 Stat. 897 (1964), Laws of the United States ("LWCFA" or the "Act"), which provides certain federal funds to be made available to participating state agencies or units of local government for the acquisition and development of land and water projects for outdoor recreation uses by the general public; and,

WHEREAS, it is the duty of the Department to share in the responsibility for administration of said project and to determine satisfactory completion, and further to act as agent for the National Park Service, United States Department of the Interior, to assure satisfactory performance;

WHEREAS, the Department and the Subrecipient desire to accomplish the Project described, and the Department has contracted with the National Park Service, an agency of the United States, for Federal reimbursement for certain costs of this Project as set forth below, and it is now necessary for the Department and the Subrecipient to execute this Agreement for the qualification and completion of said project;

NOW, THEREFORE, in consideration of the covenants to be performed by each party on behalf of the other, as set forth below, IT IS HEREBY UNDERSTOOD AND AGREED by and between the Parties as follows:

**Part I – Definitions**

The following definitions apply to this Agreement:

- A. The term "State" means the State of Montana.

- B. The term "Subrecipient" means the State agency or local government unit that is a Party to this Agreement. For purposes of these provisions, the terms "Subrecipient," "grantee," and "participant" are deemed synonymous.
- C. The term "Project" means a Land and Water Conservation Fund grant that is identified in the project scope which is subject to this Agreement and/or its subsequent amendments.
- D. The term "NPS" or "Service" means the National Park Service, United States Department of the Interior.
- E. The term "Secretary" means the Secretary of the Interior, or any representative lawfully delegated the authority to act for the Secretary.
- F. The term "Federal Funds" or "Fund" refers to the financial resource created and maintained through authority and operation of the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964), as amended.
- G. The term "Manual" means the Land and Water Conservation Fund Federal Assistance Program Manual, Volume 69, effective date October 2, 2008. The manual can be found in its entirety at [https://www.nps.gov/subjects/lwcf/upload/lwcf\\_manual.pdf](https://www.nps.gov/subjects/lwcf/upload/lwcf_manual.pdf).
- H. The term "Uniform Guidance" refers to 2 CFR 200 and can be found in its entirety at [https://www.ecfr.gov/cgi-bin/text-idx?SID=e891ff9b827f00ea9b9b773b97a609ac&node=pt2.1.200&rgn=div5#se2.1.200\\_1320](https://www.ecfr.gov/cgi-bin/text-idx?SID=e891ff9b827f00ea9b9b773b97a609ac&node=pt2.1.200&rgn=div5#se2.1.200_1320).

## **Part II – Continuing Assurances**

The Subrecipient agrees to comply with the policies and procedures set forth in the Manual. Provisions of said Manual are incorporated into and made a part of this Agreement.

The Subrecipient confirms it has reviewed and agrees to comply with the Special Conditions Appendix attached to this Agreement. The Appendix is hereby incorporated into and made part of this Agreement (Appendix B).

### Applicable Federal Circulars

The Subrecipient shall comply with applicable regulations, policies, guidelines and requirements as they relate to the application, acceptance and use of Federal funds for this federally assisted project, including but not limited to:

- The Uniform Guidance, 2 CFR 200, which supersedes and streamlines requirements from OMB Circulars A-21, A-87, A-110 and A-122; Circulars A-89, A102, and A-122; and,
- 43 CFR Part 12, Administrative and Audit Requirements and Cost Principles for Assistance Programs, Department of the Interior.

The Parties specifically recognize that the Land and Water Conservation Fund project creates an obligation to maintain the property described in the project agreement and supporting application documentation consistent with the Land and Water Conservation Fund Act and the following requirements.

Further, it is the acknowledged intent of the Parties that recipients of assistance will use monies granted herein for the purposes of this program and that assistance granted from the Fund will result in a net increase, commensurate at least with the Federal cost-share, in a subrecipient's outdoor recreation.

It is intended by both Parties that assistance from the Fund will be added to, rather than replace or be substituted for, State and local outdoor recreation funds.

The Subrecipient agrees, as the recipient of this assistance, that it will meet the following specific requirements and the terms of this Agreement:

A. Perpetuity

- 1) The Subrecipient agrees the Project is being acquired or developed with Land and Water Conservation Fund assistance and shall be maintained in perpetuity for public outdoor recreation. If Subrecipient removes the Project from outdoor public recreation either through the sale of the project area or a conversion to a non-outdoor public recreation, the Subrecipient acknowledges it is responsible for all costs associated with the replacement of the converted Project area and the subsequent construction of a new facility. Any replacement of the Project, in whole or in part, must be completed in compliance with the Manual and the Act. *All conversion/replacement processes must be coordinated through and with the approval of the Department.*
- 2) The Department shall approve such conversion only if it is in accord with the then existing State Comprehensive Outdoor Recreation Plan and only upon such conditions as deemed necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonable equivalent usefulness and location pursuant to Title 36 Part 59.3 of the *Code of Federal Regulations*. This replacement becomes subject to Section 6(f)(3) protection. The approval of a conversion shall be at the sole discretion of the Secretary, or his designee. Prior to the completion of this project, the Subrecipient and the Department may mutually alter the area described in the project agreement and the signed and dated project boundary map to provide the most satisfactory public outdoor recreation unit, except that acquired parcels are afforded Section 6(f)(3) protection as Fund reimbursement is provided.
- 3) In the event the Department provides Land and Water Conservation Fund ("LWCF") assistance for the acquisition and/or development of property with full knowledge that the project is subject to reversionary rights and outstanding interests, conversion of said property to other than public outdoor recreation uses as a result of such right or interest being exercised will occur. In receipt of this approval, the Subrecipient agrees to notify the Department of the potential conversion as soon as possible and to seek approval of replacement property in accord with the conditions set forth in these provisions and program regulations. The provisions of this paragraph are also applicable to: leased properties acquired and/or developed with Fund assistance where such lease is terminated prior to its full term due to the existence of provisions in such lease known and agreed to by the Department; and properties subject to other outstanding rights and interests that may result in a conversion when known and agreed to by the Department.
- 4) In the event the project covered by the project agreement cannot be completed in accordance with the plans and specifications for the project; the Subrecipient shall bring the project to a point of recreational usefulness agreed upon by the Subrecipient and the Department.

- 5) The Subrecipient further agrees, therefore, that the appropriate remedy in the event of a breach by the Subrecipient of this Agreement shall be the specific performance of this Agreement or the submission and approval of a conversion-of-use request as described above.

**B. Project Maintenance**

The Subrecipient agrees that the property and facilities described in this Agreement shall be operated and maintained, at the sole expense of the Subrecipient, as prescribed by Manual requirements and published post-completion compliance regulations (Title 36 Part 59 of the *Code of Federal Regulations*), including the following:

1. The property shall be maintained so as to appear attractive and inviting to the public.
2. Sanitation and sanitary facilities shall be maintained in accordance with applicable State and local public health standards.
3. Properties shall be kept reasonably open, accessible, and safe for public use. Fire prevention, lifeguard, and similar activities shall be maintained for proper public safety.
4. Buildings, roads, trails and other structures and improvements shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use.
5. The facility shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.
6. All new utility lines associated with this Agreement, and all future utility lines constructed after the completion of the project described in this Agreement, will be placed underground.
7. Subrecipient shall provide suitable permanent acknowledgment of LWCF assistance at the project site. Signs at entrances to LWCF assisted sites shall have the words "Land and Water Conservation Fund Project" and the LWCF symbol prominently displayed. Such signs or plaques are eligible project costs.

**C. Property Records**

The Subrecipient agrees that a permanent record shall be kept in the Subrecipient's public property records and available for public inspection to the effect that the property described in the scope of this Agreement and the signed and dated project boundary map made part of this Agreement, has been acquired or developed with LWCF assistance and that it cannot be converted to other than public outdoor recreation use without the written approval of the Secretary.

**D. Nondiscrimination**

By signing this Agreement, the Subrecipient certifies that it will comply with all Federal laws relating to nondiscrimination as outlined in the Civil Rights Assurance appearing at Part III-I herein.

**E. Hold Harmless/Indemnification**

Subrecipient agrees to protect, defend and save State, 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 cost of defense thereof, arising in favor of Subrecipient's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the act or omissions of Subrecipient and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this Agreement.

**Part III – Project Assurances**

**A. Project Application**

1. The Application for Federal Assistance bearing the same project number as the agreement and associated documents is by this reference made a part of this Agreement.
2. The Subrecipient possesses legal authority to apply for the grant and to finance and construct the proposed facilities. A resolution, motion or similar action has been duly adopted or passed authorizing the filing of the application, including all understandings and assurances contained herein, and directing and authorizing the person identified as the official representative of the Subrecipient to act in connection with the application and to provide such additional information as may be required.
3. The Subrecipient has the capability to finance the non-Federal share of the costs for the project. Sufficient funds will be available to assure effective operation and maintenance of the facilities acquired or developed by the Project.

**B. Project Execution**

1. The project period shall begin with the date of approval of this Agreement and shall terminate at the end of the stated or amended project period unless the Project is completed or terminated sooner in which event the Project shall end on the date of completion or termination.
2. The Subrecipient will cause work on the Project to be commenced within a reasonable time after receipt of notification that funds have been approved and assure that the Project will be prosecuted to completion with reasonable diligence.
3. The Subrecipient shall secure completion of work in accordance with the approved construction plans and specifications and shall comply with all applicable Federal and local laws and regulations, including, but not limited to:

- a) National Environmental Policy Act of 1969, as amended (P.L. 90-190, 42 U.S.C. § 4321, *et seq.*);
- b) Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 1191, May 24, 1977) Executive Order 11514;
- c) The Flood Disaster Protection Act of 1973 (12 U.S.C. § 24. 1701-1 Supp., 42 U.S.C. § 4001, *et seq.*). The Subrecipient will comply with the flood insurance purchase requirements of § 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available, as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes, for use in any area that has been identified as an area having special flood hazards by the Flood Insurance Administration of the Federal Emergency Management Agency. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
- d) Flood Plain Management and Wetland Protection, Executive Orders, 11988 and 11900;
- e) Environmental Justice in Minority and Low-Income Populations, Executive Order 12898;
- f) Department of the Interior Environmental Compliance Memorandum (ECM) 95-2, addressing environmental impacts of proposed actions on Indian Trust Resources in any environmental document;
- g) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), 94 Stat. 1894 (1970). The Subrecipient will comply with the terms of Title II and Title III and the applicable regulations and procedures implementing the act for all real property acquisitions and where applicable shall assure that the act has been complied with for property to be developed with assistance under this Agreement.
- h) Federal Act for Protection and Restoration of Estuarine Areas (P.L. 90-454);
- i) Wild and Scenic Rivers Act of 1968 (P.L. 90-542) (16 U.S.C. § 1274, *et seq.*);
- j) The Rivers and Harbor Act of 1899 (33 U.S.C. § 401, *et seq.*);
- k) Executive Order 11990, Protection of Wetlands;
- l) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661, 662);
- m) The Endangered Species Act of 1973 (16 U.S.C. § 1531, *et seq.*);
- n) The Antiquities Act of 1906 (16 U.S.C. § 431);
- o) The Archeological and Historic Preservation Act of 1966, as amended (P.L. 89-665, 16 U.S.C. § 470, *et seq.*);
- p) Architectural Barriers Act of 1968 (Pub. L. 90-480, 42 U.S.C. § 4151 *et seq.*);
- q) The National Historic Preservation Act of 1966, as amended (P.L. 88-665, 16 U.S.C. § 470, *et seq.*);
- r) Protection and Enhancement of the Cultural Environment, Executive Order 11593;
- s) Emergency Wetlands Resources Act of 1986 (P.L. 99-645); and
- t) Land and Water Conservation Fund Program of Assistance to States; Post Completion Compliance Responsibilities (36 CFR Part 59).

4. The Subrecipient shall secure completion of the work in accordance with approved construction plans and specifications and shall secure compliance with all applicable Federal, State, and local laws and regulations.

5. The Subrecipient will provide for and maintain competent and adequate architectural/engineering supervision and inspection at the construction site to ensure that the completed work conforms with the approved plans and specifications. Additionally, Subrecipient will furnish progress reports and such other information as the Department may require.
6. The Subrecipient will ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the Project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities, pursuant to 40 CFR, Part 15.20 and that it will notify the Department of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be utilized in the Project is under consideration for listing by the EPA.
7. The Subrecipient will comply with "Minority Business Enterprises" and "Women's Business Enterprises" pursuant to Executive Orders 11625, 12138 and 12432 as follows:
  - a) Place minority and women business firms on bidder's mailing lists;
  - b) Solicit these firms whenever they are potential sources of supplies, equipment, construction, or services;
  - c) Where feasible, divide total requirements into smaller needs, and set delivery schedules that will encourage participation by these firms;
  - d) The State is committed to the objectives of this policy and encourages all recipients of its grants and cooperative agreements to take affirmative steps to ensure such fairness.

The Department will work closely with the Subrecipient to ensure full compliance and that grant recipients take affirmative action in placing a fair share of purchases with minority business firms.

C. Land Acquisition Project Documentation

1. The Subrecipient will submit an appraisal report prepared in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" prior to the purchase of the property for the purpose of review and approval by the Department. *It must include a statement that the seller was given the opportunity to accompany the appraiser on his property inspection.*
2. The Subrecipient will provide a copy of the written offer to purchase at the appraisal value, or a copy of a purchase option agreement at the appraisal value. *Failure to make a legitimate offer to purchase at fair market value will result in forfeiture of grant award.*
3. The Subrecipient will provide a five-year history of title to the acquired property.
4. The Subrecipient will provide a Statement of Just Compensation and, if property is acquired at less than fair market value, a Waiver and Acceptance form. These forms are available from the Department.

5. The Subrecipient will provide a copy of the recorded warranty deed.
6. The Subrecipient will provide an updated professional survey of the acquired property showing acreage acquired and boundaries.
7. The Subrecipient will provide a copy of the title insurance policy.
8. If displacement of persons (owners or renters) results from this action, Subrecipient will provide evidence of written notification of the occupants' rights under P.L. 91-646. Proof of relocation assistance to these displaced persons must also be provided.

**D. Procurement/Construction Contracts**

1. Contracts for construction shall comply with the provisions of 43 CFR Part 12 (Administrative and Audit Requirements and Cost Principles for Assistance Programs, Department of the Interior) and the Uniform Guidance.
2. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Generally, sealed bids (formal advertising) is the preferred method for procuring construction when a complete, adequate and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for business; and the procurement lends itself to a firm fixed price contract and the selection of the bidder can be made principally on the basis of price.
3. The Subrecipient will use their own documented procurement processes which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in 2 CFR 200.318.
4. Subrecipient shall make positive effort to use small businesses, minority-owned firms, and women's business enterprises, wherever possible.
5. Contracts for construction in excess of \$25,000 shall be awarded through a process of competitive bidding involving formal advertising, with adequate purchase description, sealed bids and public openings. Copies of all advertisements, bids and a copy of the contract shall be retained for inspection by the Department.
6. The Subrecipient shall inform all bidders on contracts for construction that Federal funds are being used to assist in construction.
7. Written Change Orders shall be issued for all necessary changes in the facility being constructed under contract. Such Change Orders shall be submitted to the Department for approval and shall be made a part of the project file and kept available for audit.
8. No grant or contract may be awarded by any grantee, subgrantee or contractor of any grantee or subgrantee to any party which has been debarred or suspended under Executive Order 12549. By signing the LWCF agreement, the Subrecipient certifies that it will

comply with debarment and suspension provisions appearing in the Special Conditions (Appendix B) herein.

9. The Subrecipient shall include the following in all contracts:

- a) "Equal Opportunity Clause," in compliance with Executive Order 11246, as amended by Executive Order 11375, and as supplemented by Department of Labor regulations (41 CFR Part 60). Mandatory for contracts in excess of \$10,000.
- b) Provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate.
- c) Suitable provisions for termination by the grantee including the manner by which it will be affected and the basis for settlement. In addition, such contracts may be terminated for default, as well as conditions under which the contract may be terminated due to circumstances beyond the control of the contractor.
- d) A provision to the effect that the sponsor, the State, the Comptroller of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records of the contractor, which are directly pertinent to the project, for the purpose of making audits, examination, excerpts and transcriptions.
- e) Maintain statutory workmen compensation, liability and property damage insurance.

10. All contracts in excess of \$100,000 shall include the following:

- a) A provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874). This act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work to give up any part of the compensation to which he is otherwise entitled.
- b) A provision that requires the contractor to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970, the Federal Water Pollution Control Act, Executive Order 11738, and EPA regulations (40 CFR Part 15).
- c) Where applicable, a provision for compliance with the Contract Work Hours and Safety Standards Act, §§ 102 and 107 (40 U.S.C. §§ 327-333), as supplemented by the Department of Labor regulations (29 CFR Part 5).

E. Project Costs

Project costs eligible for assistance shall be determined upon the basis of the criteria set forth in the Manual and the Uniform Guidance. It is expressly agreed and understood by the Subrecipient that only those Project expenditures incurred within the project period specified by this Agreement will be subject to reimbursement under this Agreement, except as may be otherwise provided by the Manual.

1. The Subrecipient hereby represents to and assures the Department that it has available sufficient funds to meet its share of the cost of the Project and has the good faith intention of using such funds for completing the Project, and that no financial assistance has been received, promised or committed under any other Federal program with regard to the specific proposals covered by this agreement.
2. The Department will commit to the Subrecipient all Federal funds awarded to the Department by the National Park Service for the Project as outlined in the Application.
3. It is understood that the Department will withhold five percent of the Federal reimbursement until the entire Project scope as outlined in the grant application and this Agreement is complete and open to the public for use.
4. The Subrecipient agrees to make immediate monetary restitution for any disallowances of costs or expenditures on unauthorized activities which are disclosed through audit or inspection by the Department.
5. The Subrecipient must submit eligible costs and expenditures equaling or exceeding the Subrecipient's Total Project Cost (direct and indirect), as detailed on the Subrecipient Contract Cover Sheet of this Agreement, before the project can be closed out by the Department.
6. Project costs eligible for assistance shall be determined upon the basis of criteria set forth in the Manual, the Uniform Guidance, or in written regulations which may be provided by the Department.
7. The Subrecipient will prepare and submit billing statements of eligible Project expenditures to the Department using the Web Grants online grant system found at [www.fundingmt.org](http://www.fundingmt.org).

F. Project Administration

1. The Subrecipient shall promptly submit such reports and documentation as the Department may request.
2. The Subrecipient may use any generally accepted accounting system, provided such system meets the minimum requirements set forth in the Manual and supplemental instructions which may be issued by the Department.
3. Properties and facilities acquired or developed with Federal assistance shall be available for inspection by the Department and/or the NPS at any time.

4. Any deviations, which will result in any change of Project scope or objectives, shall be submitted in a timely manner to the Department for approval.
5. The acquisition cost of real property shall be based upon value determined by a competent appraiser using the Yellow Book Federal Appraisal Standards. Subrecipients must provide to the Department a copy of their Appraisal reports along with an administrative review report for all acquisition projects. A review and approval of all reports must occur by the Department before reimbursement payments with federal funds are disbursed.
6. All development plans and specifications shall be submitted for approval by the Department prior to commencement of any site preparation or construction and no such site preparation or construction may be undertaken until so approved. When approved, development plans and specifications will become a part of this Agreement and execution of the project must be in accord with the approved plans and specifications.

#### G. Retention and Custodial Requirements for Records

1. Financial records, supporting documents, statistical records, and all other records pertinent to this grant shall be retained in accordance with 2 CFR 200 for a period of three years; except the records shall be retained beyond the three-year period if audit findings have not been resolved.
2. The retention period starts from the date of the final expenditure report for the project.
3. Subrecipients are authorized to substitute copies in lieu of original records.
4. The Department, the Secretary, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the State and local governments and their subgrantees which are pertinent to a specific project for the purpose of making audit, examination, excerpts and transcripts.

#### H. Project Termination

1. The Department may temporarily suspend Federal assistance under the project pending corrective action by the Subrecipient or pending a decision to terminate the grant by the Department.
2. The Subrecipient may upon written notice to the Department unilaterally rescind this Agreement at any time prior to the commencement of the Project. After Project commencement, this Agreement may be rescinded, modified, or amended only by mutual agreement. The Project shall be deemed commenced when the Subrecipient makes an expenditure or incurs any obligation with respect to the Project.
3. The Department may terminate the Project in whole, or in part, at any time before the date of completion, whenever it is determined that the Subrecipient has failed to comply with the conditions of the grant. The Department will promptly notify the Subrecipient in writing of the determination and the reasons for the termination, together with the effective date. Payments made to Subrecipients or recoveries by the Department under projects terminated for cause shall be in accord with the legal rights and liabilities of the Parties. Such termination may result in declaration by the Department that Subrecipient is ineligible to receive Federal Funds for future projects.

4. The Department or Subrecipient may terminate grants in whole, or in part at any time before the date of completion, when both parties agree that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds. The Parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The Subrecipient shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible. The State may allow full credit to the Subrecipient for the Federal share of the noncancelable obligations, properly incurred by the Subrecipient prior to termination.
5. Termination either for cause or for convenience requires that the Project in question be brought to a state of recreational usefulness agreed upon by the Subrecipient and the Department or that all funds provided by the LWCF be returned to the Department.

I. Lobbying with Appropriated Funds

The Subrecipient must certify that no Federally appropriated funds have been paid or will be paid, by or on behalf of the State, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding, extension, continuation, renewal, amendment, or modification of this grant. (See Appendix C.)

J. Provision of a Drug-Free Workplace

In compliance with the Drug-Free Workplace Act of 1988, 41 U.S.C. § 8101, *et seq.*, the Subrecipient certifies that it will or will continue to provide a drug-free workplace.

K. Civil Rights Assurance

The Subrecipient certifies that, as a condition to receiving any Federal assistance from the Department of the Interior, it will comply with all Federal laws relating to nondiscrimination. These laws include, but are not limited to:

1. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*, which prohibits discrimination on the basis of race, color, or national origin;
2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicap;
3. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101, *et seq.*), which prohibits discrimination on the basis of age;
4. Americans with Disabilities Act, Title II, 42 U.S.C. § 12101, *et seq.*;
5. ADA Accessibility Guidelines, 28 CFR 36;
6. Title IX of the Education Amendments of 1972 at 43 CFR 41; and
7. Limited English Proficiency (Executive Order 13166), 28 CFR 42.104(b)(2)

The Subrecipient assures it will immediately take any measures necessary to effectuate this Agreement.

This assurance shall apply to all aspects of the Subrecipient's operations including those parts that have not received or benefited from Federal financial assistance.

**L. Conflict of Interest**

1. No official or employee of the State or Subrecipient who is authorized in his official capacity to negotiate, make, accept, or approve, or to take part in such decisions regarding a contract or subcontract in connection with this Project shall have any financial or other personal interest in any such contract or subcontract.
2. No person performing services for the Subrecipient in connection with this Project shall have a financial or other interest other than his employment or retention by the Participant, in any contract or subcontract in connection with this Project. No officer or employee of such person retained by the Subrecipient shall have any financial or other personal interest in any real property acquired for this Project unless such interest is openly disclosed upon the public records of the Subrecipient, and such officer, employee or person has not participated in the acquisition for or on behalf of the Subrecipient.
3. No member of or delegate to Congress shall be admitted to any share or part of this Agreement, or to any benefit to arise hereupon, unless such benefit shall be in the form of an agreement made with a corporation for its general benefits.
4. The Subrecipient shall be responsible for enforcing the above conflict of interest provisions.

**M. Hatch Act**

No officer or employee of the Subrecipient whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this Agreement shall take part in any of the political activity proscribed in the Hatch Political Activity Act, 5 U.S.C. 118K, with the exceptions therein enumerated.

**Part IV – Subrecipient Monitoring/Compliance**

The Subrecipient agrees, as the recipient of this assistance, that it will meet the following specific requirements regarding compliance requirements of 2 CFR 200 and will work with the Department's Federal Assistance and Compliance Bureau in ensuring the requirements of 2 CFR 200 are met:

- A. The Subrecipient will participate in an initial risk assessment conducted by the Department prior to and during the term of this Agreement.
- B. The Subrecipient will participate in reporting as a condition of acceptance of the Federal Funding. Status reports are due in the Web Grants system on the following schedule:

Reporting Period	Status Report Due Date
July 1 – December 31	January 31

January 1 – June 30	July 31
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- C. The Subrecipient will participate in onsite monitoring conducted by the Department. The Department may conduct onsite monitoring visits with Subrecipient during the term of this Agreement to ensure Project goals and objectives as outlined in the Project Application are on track. The Department may also request the meetings as problems arise. The Subrecipient's failure to participate in any monitoring visits, missing or rescheduling two consecutive monitoring visits, or Subrecipient's failure to make a good faith effort to resolve problems may result in termination of this Agreement.
  
- D. The Subrecipient will annually complete the Subrecipient Survey provided by the Department's Federal Assistance and Compliance Bureau.

Questions or correspondence with this Agreement or the LWCF project/program can be made to the following:

Address: Montana Fish, Wildlife & Parks  
Tom Reilly, Assistant Administrator  
1420 East 6<sup>th</sup> Avenue  
PO Box 200701  
Helena, MT 59620-0701

Phone: 406-444-3752  
Email: [treilly@mt.gov](mailto:treilly@mt.gov)

**EXECUTION**

The parties through their authorized agents have executed this Agreement on the dates set out below.

STATE OF MONTANA  
Fish, Wildlife & Parks  
PO Box 200701  
Helena, MT 59620-0701

City of Billings  
390 N 23<sup>rd</sup> St  
Billings, Mt 59101  
829046692

By: Tom Reilly/ASLO  
(Name/Title)  
Tom Reilly  
(Signature)

By: \_\_\_\_\_  
(Name/Title)  
\_\_\_\_\_  
(Signature)

Date: 6/20/19

Date: \_\_\_\_\_

Approved as to Legal Content:

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 Legal Counsel      6-20-19  
(Date)



STATEPARKS.MT.GOV

MONTANA FWP

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**Appendix A:**

**Subrecipient Agreement Cover Form**

<b>1. SUBRECIPIENT NAME</b> City of Billings		<b>5. SHORT PROJECT TITLE:</b> Rose Park Playground Replacement	
<b>2. SUBRECIPIENT CONTACT</b> Mark Jarvis 390 N 23 <sup>rd</sup> St, Billings, MT 59101 <a href="mailto:jarvism@ci.billings.mt.us">jarvism@ci.billings.mt.us</a> 406-657-8367		<b>6. FWP CONTRACT LIAISON</b> Tom Reilly	
<b>3. SUBRECIPIENT UNIQUE ENTITY IDENTIFIER: (DUNS NUMBER or Federal Tax ID #):</b> 829046692		<b>7. FWP FINANCIAL LIAISON</b> Jennifer Thompson	
<b>4. SUBRECIPIENT TYPE</b> City		<b>8. FWP PROJECT CODING</b> Expense Code: 66202 Project #: LW180750	
<b>9. PERIOD OF PERFORMANCE</b> START DATE: 6/24/2019 END DATE: 6/30/2022	<b>10. AWARD TO SUBRECIPIENT THIS ACTION</b> \$150,000 <b>13. TOTAL AWARD TO SUBRECIPIENT</b> \$150,000	<b>11. FED. FUNDS COMMITTED ON THIS ACTION</b> \$150,000 <b>14. TOTAL FED FUNDS COMMITTED ON THIS CONTRACT</b> \$150,000	<b>12. NON-FED. FUNDS COMMITTED THIS ACTION</b> \$0 <b>15. TOTAL NON-FED FUNDS COMMITTED ON THIS CONTRACT</b> \$0
<b>16. IS THIS RESEARCH &amp; DEVELOPMENT</b> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		<b>17. SUBRECIPIENT MATCH REQUIREMENT</b> \$153,600	
<b>18. SUBRECIPIENT INDIRECT COST RATE AND TERMS (IF CHARGING INDIRECT COSTS, PLEASE ATTACH 1) COPY OF NEGOTIATED RATE FROM THE COGNIZANT AGENCY, OR 2) IF DE MINIMIS RATE IS USED, ATTACH A COPY OF CURRENT FINANCIAL STATEMENTS. BY SIGNING THIS CONTRACT, SUBRECIPIENT CERTIFIES COMPLIANCE WITH 2 CFR 200.414 IN RELATION TO THE DE MINIMIS RATE)</b>			
<b>19. FEDERAL AWARD PROJECT DESCRIPTION: (REQUIRED FOR FFATA):</b> Funding to City of Billings to construct an ADA Playground.			

20. FUNDING SOURCE INFORMATION/FEDERAL AND NON-FEDERAL					
A. FUNDING SOURCE (FS)	B. FS AWARD DATE TO FWP	C. FAIN - FEDERAL AWARD IDENTIFICATION NUMBER	D. TOTAL FED. AWARD TO FWP	E. TOTAL OBLIGATION TO SUBRECIPIENT	F. CFDA NUMBER AND NAME
USDO/I/NPS	5/24/2019	P19AP00070	\$151,800	\$150,000.00	15.916 Outdoor Recreation, Acquisition, Development and Planning (30-00750 Land & Water Conservation Fund)
City of Billings Parks Cash				\$270,000.00	
				\$	
				\$	
<b>GRAND TOTAL</b> (should equal 13 above)				<b>\$420,000.00</b>	

## Special Conditions

Applies to all agreements, contracts and collaborative agreements initiated by  
Montana Fish, Wildlife & Parks

1. **SAM / DUNS.** Subrecipient agrees to comply with applicable requirements regarding registration with the System for Award Management (SAM) (or with a successor government-wide system officially designated by OMB). Subrecipient agrees to obtain a Dun & Bradstreet (DUNS) number and to maintain a current registration. The details and processes for registration are available at <https://www.dnb.com> and <https://www.sam.gov/portal/SAM/#1>. 2 C.F.R. 200.331. Subrecipient further provides that it shall not enter into any subaward, contract or other agreement using funds provided hereunder with any party listed on the SAM Exclusions in accordance with Executive Orders 12549 and 12689. The SAM Exclusions can be found at <https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>
2. **Suspension/Debarment.** Subrecipient confirms it is not debarred, suspended or otherwise listed on the System for Award Management (SAM) Excluded Parties List. 2. C.F.R. Appendix II (I).
3. **Subrecipient agrees to register with the Montana Secretary of State.** Business that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with §§ 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain guidance of their attorney or accountant to determine whether their activity is considered transacting business. If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665 or visit their website at <http://sos.mt.gov>.
4. **Approved Project/Program.** Grant funds may be used only for the purposes in the Subrecipient's approved program/project. The Subrecipient shall not undertake any work or activities that are not described in the grant project/program.
5. **Availability of Funds.** This grant award is conditional upon availability of government funds and may be reduced at any time due to budget reductions.
6. **Non-committal to Future Funding.** Award of this grant does not commit the Department to future funding.
7. **Misuse of Award Funds.** The Subrecipient understands and agrees that misuse of award funds may result in a range of penalties, including suspension of current and future funds, suspension or debarment from federal grants, recoupment of monies provided under an award, and civil and/or criminal penalties.
8. **Identical Cost Items for Multiple Awards.** The Subrecipient agrees that if it currently has an open award of federal funds or if it receives an award of federal funds other than this award, and those award funds have been, are being used, in whole or in part, for one or more of the identical cost items for which funds are being provided under this award, the Subrecipient will promptly notify, in writing, the Department grant manager to eliminate any inappropriate duplication of funding.
9. **Reversion of Unexpended Funds.** Any funds not properly expended during the grant period shall lapse and revert to the Department.
10. **Project Income.** No projects administered by the Department and funded through Federal funding sources should produce an income stream. See 2 C.F.R. 200.77 Program Income for definition of what is considered program income. If there is a possibility that the project will produce income, subrecipient must confer with Program Coordinator prior to commencement of project.

11. **Cancellation of Award.** Subrecipients are required to provide an implementation timeline with the Project description. Projects that do not include a timeline of implementation are subject to the following condition:
  - a. **COMMENCEMENT.** If a project is not operational within the time frame identified in this Agreement, the Subrecipient must report by letter to the Department the steps taken to initiate the Project, the reasons for delay, the expected start date and the impact the delay may have on the scheduled completion deadline.
12. **Indirect Cost Rate:**
  - a. A Subrecipient that has an established Federally Approved Indirect Cost Rate agreement in place may request reimbursement for indirect costs. Subrecipients must provide a copy of the organization's Federal Indirect Cost Negotiation Agreement.
  - b. **De Minimis Indirect Cost Rate.** A Subrecipient that is eligible under the Part 200 Uniform Requirements to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise the Department in writing of both its eligibility and its election and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs.
13. **Single Audit Requirement.** Subrecipients are required to allow State access to Subrecipients' records and financial statements as required under the Uniform Guidance. Subrecipients who receive less than \$750,000 in federal funds during the fiscal year are exempt from audit but are required to have available records for review or audit by State. Subrecipients who expend \$750,000 or more in federal funds during its fiscal year are required to have a single audit conducted in accordance with 2 C.F.R. 200.514 or undergo a program-specific audit.
14. **Personnel Time and Attendance Records.** Subrecipient must maintain time and attendance records to support personnel costs associated with grant project.
15. **Travel Reimbursement.** State rates for mileage, per diem and lodging are maximum amounts that can be charged by subrecipients funded by the Department. Subrecipient may utilize its travel policy and rates. Rates, however, may not exceed Federal rates.
16. **Vehicle Usage Rate:** Programs must utilize the State's motor pool rate or the straight mileage rate for the duration of the grant. The rate must be tracked per project and reported accordingly.
17. **Consultant Services.** Consultant services provided by consultants employed with for-profit, nonprofit, and not-for-profit organizations are subject to competitive bidding procedures. Contracted services provided by other types of organizations may also have restrictions. Please check with Program Manager prior to committing grant funds.
18. **High-Risk Subrecipient.** The Subrecipient agrees to comply with any additional requirements that may be imposed during the grant performance period if the Department determines that the recipient is a high-risk grantee. See 2 C.F.R. 200.331(b) and 2 C.F.R. 200.331(e).
19. **Reduce Text Messaging While Driving.** Pursuant to Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, 74 Fed. Reg. 51225 (October 1, 2009), the Department encourages Subrecipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this grant and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

20. **Seat Belt Provision.** The Subrecipient is encouraged to adopt and enforce on-the-job seat belt use policies and programs for their employees when operating company-owned, rented, or personally owned vehicles. These measures include, but are not limited to, conducting education, awareness, and other appropriate programs for their employees about the importance of wearing seat belts and the consequences of not wearing them.
21. **Trafficking in Persons.** This award is pursuant to paragraph (g) of section 106 of the Trafficking Victims Protections Act of 2000, as amendment (2 CFR §175.15).
22. **Compliance with Executive Order 11246 of September 24, 1965, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in U.S. Department of Labor regulations (41 CFR chapter 60).** (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subrecipients.)
23. **Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in U.S. Department of Labor regulations (29 CFR Part 3).** (All contracts and subgrants for construction or repair.)
24. **Compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970, the Federal Water Pollution Control Act, Executive Order 11738, and Environmental Protection Agency regulations (406 CFR Part 15).**
25. **Compliance with Montana Environmental Policy Act, § 75-1-101, et seq, MCA.**
26. **Compliance with §§ 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by U.S. Department of Labor regulations (29 CFR Part 5).** (Construction contracts awarded by grantees and subrecipients more than \$2,000, and more than \$2,500 for other contracts which involve the employment of mechanics or laborers.)
27. **Compliance with 41 U.S.C. § 4712, Enhancement of Recipient and Subrecipient Employee Whistle Protection:** (a) This award, related subawards and related contracts over the simplified acquisition threshold and all employees working on this award, related subawards and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies established at 41 USC § 4712; (b) Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC § 4712; (c) The recipient shall insert this clause, including this paragraph, in all subawards and in contracts over the simplified acquisition threshold related to this award.
28. **Compliance with notice of awarding federal agency requirements and regulations pertaining to reporting.**
29. **Compliance with notice of awarding federal agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed during or under such contract.**
30. **Compliance with awarding federal agency requirements and regulations pertaining to copyrights and rights in data.**
31. **Compliance with equal opportunity to participate in and benefit from programs described is available to all individuals without regard to their race, color, religion, national origin or ancestry, sex, age, handicap, disability, sexual orientation, gender identity, military or veteran status or political affiliation. Complaints of discrimination should be sent to the Office of Human Resources, Montana Department of Fish, Wildlife & Parks, 1420 E. Sixth Avenue, Helena, Montana 59601.**
32. **Compliance with all applicable provisions of the Federal Funding Accountability and Transparency Act of 2006. 44 U.S.C. § 3501 ("FFATA").** As of March 1, 2011, recipients of federal grants and contracts,

including the Department, must comply with subrecipient reporting requirements under the FFATA. Under FFATA, the Department is required to report on newly issued first tier subgrants of \$25,000 or more. The information reported will be made available to the public on the USASpending.gov website. The reports filed pursuant to FFATA include the following information:

- a. Name of entity receiving the award;
  - b. Amount of the award;
  - c. Information on the award including transaction type, funding agency, program source, award title and CFDA number;
  - d. Location of the entity receiving the award and primary location of performance under the award, including city, state, congressional district and country;
  - e. DUNS Number of the entity receiving the award or the parent entity of the recipient; and
  - f. Names and total compensation of the five highest compensated officers of the entity if, during the preceding fiscal year, it received: (a) 80 percent or more of its annual gross revenues in federal awards, and (b) \$25 million or more in annual gross revenues from federal awards; and if the public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1976.
33. Compliance with all applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Act of 2014.

Appendix C

Lobbying Certification

In compliance with 31 U.S.C. § 1352, the Subrecipient certifies to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, and officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Signature of Certifying Official

\_\_\_\_\_  
Printed Name & Title of Certifying Official

\_\_\_\_\_  
Name of Subrecipient

\_\_\_\_\_  
Date