

FUNDING AGREEMENT

Overlay Project of the Johnson Lane/Coulson Road Intersection

This Funding Agreement (AGREEMENT) is made and entered into by and between Yellowstone County (RECIPIENT), 316 N 26th Street, Billings, MT 59101 (81-6001449), and the Montana Department of Transportation (MDT), PO Box 201001, Helena, MT 59620 (81-0302402), together referred to as "the PARTIES."

The purpose of this AGREEMENT is to establish the responsibilities and duties of the PARTIES with respect to MDT's contribution of \$41,857 in non-federal funds to the RECIPIENT for its overlay project of the Johnson Lane/Coulson Road intersection (PROJECT).

The PROJECT's goal is to improve the driving surface and extend the life of the pavement at the PROJECT'S location and relieve the need to initiate a future MDT project to repair this intersection.

WHEREAS, MDT supports this PROJECT and agreed to contribute \$41,857 to be used by RECIPIENT for PROJECT costs; and

NOW THEREFORE, the PARTIES agree as follows:

I. FUNDING

1. RECIPIENT:

- a. Will accept forty-one thousand, eight hundred and fifty-seven dollars (\$41,857) for RECIPIENT's use on the PROJECT and will only spend the funds on expenses for the PROJECT.
- b. Agrees that MDT's maximum and only funding contribution to the PROJECT is the one-time payment of \$41,857.

2. MDT:

- a. MDT will pay RECIPIENT the amount of \$41,857 out of non-federal matching funds when this AGREEMENT is fully executed.

3. Participation

a. RECIPIENT:

1. Agrees to include and coordinate with MDT throughout the planning process of the PROJECT.

b. MDT:

1. Agrees to participate and coordinate with the RECIPIENT throughout the planning process of the PROJECT.

II. GENERAL TERMS AND CONDITIONS

1. Hold Harmless and Indemnification

- a. The RECIPIENT agrees to protect, defend, indemnify, and hold MDT, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in RECIPIENT's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of the RECIPIENT, its agents, or sub-contractors, under this AGREEMENT, except the negligence of MDT.
 - b. MDT agrees to protect, defend, indemnify, and hold the RECIPIENT, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the MDT's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of MDT, its agents, or sub-contractors, under this AGREEMENT, except the negligence of the RECIPIENT.
- 2. Insurance
 - a. General Requirements: Each PARTY shall maintain for the duration of this AGREEMENT, at its own cost and expense, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the duties and obligations in this AGREEMENT by each PARTY, its agents, employees, representatives, assigns, or sub-contractors. This insurance shall cover such claims as may be caused by any negligent act or omission.
 - b. General Liability Insurance: Each PARTY shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1 million per occurrence and \$2 million aggregate per year to cover such claims as may be caused by or arising out of any negligent acts or omissions in work or services performed under this AGREEMENT, or as established by statutory tort limits as provided by a public entity self-insurance program either individually or on a pool basis as provided by Mont. Code Ann. Title 2, Chapter 9.
 - c. General Provisions: All insurance coverage must be with a carrier licensed to do business in the State of Montana or by a public entity self-insured program either individually or on a pool basis. Each PARTY must notify the other immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. Each PARTY reserves the right to request complete copies of the other PARTY's insurance policy or self-insured memorandum of coverage at any time.
 - d. Workers' Compensation Insurance: The RECIPIENT must maintain workers' compensation insurance and require its contractors and its contractor's sub-contractors to carry their own workers' compensation coverage while performing work within MDT right-of-way in accordance with Mont. Code Ann. §§39-71-401 and 39-71-405. Neither the RECIPIENT nor its employees are employees of MDT. This insurance/exemption must be valid for the entire AGREEMENT period.
- 3. Choice of Law and Venue – This AGREEMENT shall be governed by the laws of Montana. The PARTIES agree that any litigation concerning this AGREEMENT must be brought in the First Judicial District Court, in and for the County of Lewis and Clark, State of Montana, and each PARTY shall pay its own costs and attorney fees except as otherwise noted in this AGREEMENT.

4. Binding Effect – The benefits and obligations set forth in this AGREEMENT shall be binding upon, and inure to the benefit of, their respective successors, administrators and assigns of the PARTIES.
5. Relationship of Parties – Nothing contained in this AGREEMENT shall be deemed or construed (either by the PARTIES hereto or by any third party) to create the relationship between the PARTIES.
6. Non-Discrimination – The RECIPIENT will require that during the performance of any work arising out of this AGREEMENT the RECIPIENT, for itself, assignees, and successors shall comply with all applicable non-discrimination regulation set forth in Attachment A attached hereto and made part of this AGREEMENT.
7. Americans with Disabilities Act (ADA) – MDT requires that any construction resulting from this AGREEMENT must include appropriate pedestrian facilities that meet or exceed current MDT policies and guidelines for accessibility as set forth by the United States Department of Justice 2010 ADA Standards for Accessibility Design, United States Access Board Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way, and MDT's detailed drawings, 608 series.
8. Audit – The RECIPIENT grants to the Legislative Auditor and the Legislative Fiscal Analysts the right, without prior notice and during normal business hours, to audit, at their own costs and expense, all records, reports, and other documents, the RECIPIENT maintains in connection with this AGREEMENT.
9. 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 (3) years after the completion date of the AGREEMENT or the conclusion of any claim, litigation or exception relating to the State of Montana or a third party.
10. Amendment and Modification – This AGREEMENT may be modified or amended only by written Amendment signed by the PARTIES. In addition to the terms and conditions contained herein, the provisions of any Amendment may be incorporated and made a part hereof by this reference in the terms of the amendment so provided. In the event of any conflict between the terms and conditions hereof and the provisions of any Amendment, the provision of the Amendment shall control, unless the provisions thereof are prohibited by law.
11. Representatives
 - a. RECIPIENT's Representative: The RECIPIENT's representative for this AGREEMENT shall be the RECIPIENT manager or designee or such other individual as RECIPIENT shall designate in writing. Whenever approval or authorization from or communication or submission to RECIPIENT is required by this AGREEMENT, such communication or submission shall be directed to the RECIPIENT's representative and approvals or authorizations shall be issued only by such representative; provided, however, that in exigent circumstances when RECIPIENT's representative is not available, MDT may direct its communication or submission to other designated RECIPIENT personnel or agents.

Recipient's contact for billing and accounting:
Jennifer Jones
Finance Director
jjones@yellowstonecountymt.gov
316 N 26th Street, RM 3401, Billings, MT 59101

- b. MDT's Representative: The MDT representative for this AGREEMENT shall be the Chief Financial Officer or Rail, Transit & Planning Division Administrator, or such other individual as MDT shall designate in writing. Whenever direction to or communication with MDT is required by this AGREEMENT, such direction or communication shall be directed to MDT's representative; provided, however, that in exigent circumstances when MDT's representative is not available, RECIPIENT may direct its direction or communication or submission to other designated MDT personnel or agents.

MDT's contact for billing and accounting:

Heidi Iha

Special Project Accountant

hiha@mt.gov

406-444-7280

P.O. Box 201001

Helena, MT 59620-1001

12. Counterpart Execution – This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

(Signature Pages to Follow)

EXECUTION BY YELLOWSTONE COUNTY (RECIPIENT)

Signature of RECIPIENT'S Designated Representative

Date: _____

Mark Morse, Chair, Yellowstone County BOCC

Name and title of RECIPIENT'S Designated Representative

Reviewed for Legal Content:

Signature of RECIPIENT'S Legal Services Representative

Date: _____

Steve Williams, Chief In-House Counsel

Name and title of RECIPIENT'S Legal Services Representative

EXECUTION BY STATE OF MONTANA DEPARTMENT OF TRANSPORTATION (MDT)

Signature of MDT's Designated Representative

Date: _____

Dustin Rouse, Chief Engineer
Name and title of MDT's Designated Representative

Reviewed for Legal Content:

Signature of MDT's Legal Services Representative

Date: _____

Valerie Baulkas, Chief Legal Counsel
Name and title of MDT's Legal Services Representative

Reviewed for Civil Rights Content:

Signature of MDT's Civil Rights Representative

Date: _____

Erika Wimmer, Bureau Chief, Civil Rights
Name and title of MDT's Civil Rights Representative

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,
age, disability, income-level & Limited
English Proficiency

State protected classes

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

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. The PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. A statement that the PARTY does not discriminate on the grounds of any protected classes.
 - ii. A statement that the 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 the 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, the 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 the 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 MDT 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. The 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.