

Funding, Construction, Maintenance and Local Agency Guidelines (LAG) Agreement

**Federal Project ID To be Determined
Johnson Lane Sidewalks
UPN 10721000
MDT Contract Number 114346**

This Agreement by and between Yellowstone County (Local Agency) and the Montana Department of Transportation (MDT) (collectively Parties) establishes the responsibilities and duties of the Parties with respect to Project activities including the design and construction of a sidewalk within the City of Lockwood, Montana.

Whereas, the construction will be accomplished through Uniform Project Number 10721000, Federal-Aid Project Number Federal Project ID To be Determined titled Johnson Lane Sidewalks (Project) within the City of Lockwood and further described in the Project Location Map in Attachment “B”; and,

Whereas, Federal Highway Administration (FHWA) funds available through the Transportation Alternatives Program will be used to pay for the construction, the Local Agency and MDT must ensure that federal and state requirements are met for the Project to remain eligible for state and/or federal funding; and,

Whereas, the Project lies on the designated Urban Highway System designated by the Montana Transportation Commission and MDT as per Mont. Code Ann. § 60-2-126; and,

Whereas, MDT and Local Agency recognize the need to construct the Project, the Local Agency deeming it to be a valuable and beneficial consideration, and the Parties are willing to share in its costs in accordance with Article VI, Funding.

Now, therefore, the Parties agree as follows:

ARTICLE I. FEDERAL SUBRECIPIENT AWARD INFORMATION

All information not included below will be provided by MDT in a supplemental document when the Local Agency submits its first request for reimbursement.

1. Subrecipient's name: Yellowstone County;
2. Local Agency's Unique Entity ID: FNVKTJD3B7C1;
3. Federal Award Identification Number (FAIN): _____;
4. Federal Award Date: _____;
5. Subaward Period of Performance Start and End Date: _____;
6. Subaward Budget Period Start and End Date: _____;
7. Amount of Federal Funds Obligated in the subaward: _____;

8. Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity, including the current financial obligation: _____;
9. Total Amount of the Federal Award committed to the subrecipient by the pass-through entity: _____;
10. Federal Award Project Description: Transportation Alternatives;
11. Awarding Agency: FHWA;
12. Assistance Listing Number: 20.287;
13. This Project is not for research and development; and
14. Indirect Cost Rate: If the Local Agency chooses to claim an indirect cost rate for reimbursement, it must do so in accordance with 2 CFR Part 200.414 and Section E, Appendices III-VIII. The Local Agency may use the current 15% de minimis indirect cost rate, unless the Local Agency has an indirect cost rate approved by a cognizant agency and submits a copy of the indirect cost approval letter to MDT.

ARTICLE II. GENERAL OBLIGATIONS OF MDT

1. MDT will provide appropriate and timely input during the Project's development.
2. If the Local Agency does not fulfill its maintenance requirements as stated herein, MDT may complete the required maintenance and seek compensation from the Local Agency. In doing so, MDT must first provide notice to the Local Agency, allowing reasonable time to complete any such maintenance. If MDT performs such maintenance under this section, it must provide detailed invoices of such costs to the Local Agency.
3. MDT may complete any roadway or right-of-way maintenance required due to a public emergency and seek compensation from the Local Agency for any costs incurred. In doing so, MDT may first provide notice to the Local Agency, when possible, allowing time to complete any such maintenance. If MDT performs maintenance under this section, it must provide detailed invoices of such costs to the Local Agency.

ARTICLE III. GENERAL OBLIGATIONS OF THE LOCAL AGENCY

1. The Local Agency will design, award, and administer the contract to construct the Project.
2. The Local Agency will provide MDT opportunities to participate in the Project's development, including invitation to the final inspection of the Project.
3. The Local Agency agrees to conform in all regards to Mont. Code Ann. Title 61, Chapter 8, and will not take any action, by enacting an ordinance or otherwise, in contradiction of the traffic laws in Mont. Code Ann. Title 61, Chapter 8.

4. The Local Agency is responsible for issuing all future encroachment and approach permits and ensuring the resulting actions do not interfere with roadway or pedestrian travel or decrease safety.
5. The Local Agency will conduct all on-system roadway maintenance and the Project-Specific Feature maintenance identified in Article V.
6. The Local Agency will continue to enforce the ordinances, laws and/or regulations necessary and essential for the operations of the Project.
7. The Local Agency, at its sole expense, must obtain and maintain all federal, state and local building permits or other permits of any type or nature required by a governing authority, except as noted in this Agreement.
8. The Local Agency agrees to regulate utility occupancy on the right-of-way of this roadway in conformance with occupancy regulations that comply with or are more restrictive than the requirements of the Administrative Rule of Montana 18.7.201 through 18.7.231, governing "Right of Way Occupancy by Utilities."
9. The Local Agency agrees it will assume full and complete responsibility for the Project, including any right-of-way or easements acquired for the Project and ownership and responsibility for any permits obtained for the Project.

ARTICLE IV. PROJECT-SPECIFIC CONSTRUCTION PERMITS OR PROVISIONS

1. **Small Municipal Separate Storm Sewer System (MS4) Permit**
 - a. MDT concludes, and the Local Agency agrees, the Project work is designed in compliance with applicable Small MS4 Permit requirements.
 - b. The Local Agency agrees to operate, monitor and maintain storm water management features in compliance with applicable MS4 requirements.

ARTICLE V. PROJECT-SPECIFIC FEATURES

1. **Sidewalks**
 - a. Upon completion of the Project by the Local Agency and its contractor, the Local Agency agrees to maintain and repair the sidewalks within the Project limits and ensure they are safe and functional for the traveling public.
2. **Local Agency Signs**
 - a. Upon completion of the Project by the Local Agency and its contractor, the Local Agency agrees that it is responsible, at no cost to MDT, to maintain the Local Agency signs (e.g., trail signs, parking signs, etc.) within the Project.
 - b. For the purposes of this Agreement, "maintenance of signs," is defined as: the inspection, cleaning, repair and replacement of signs damaged through weathering, vandalism, wind, or other means.

ARTICLE VI. FUNDING

1. The Local Agency agrees to pay the requisite 13.42% non-federal matching funds for the Project and associated indirect costs up to the allowable overrun percentage in accordance with Tables 1 and 2 below.
2. The Local Agency is responsible for 100% of non-federal aid eligible costs and for the payback of state and federal funds expended on non-federal aid eligible elements of the Project, if required.
3. It is understood and agreed between the Parties that Mont. Code Ann. § 17-1-106 requires any state agency that receives non-general funds, including MDT, to identify and recover its indirect costs. These costs are in addition to the direct Project costs. Indirect costs will be recovered on MDT charges to the Project at the rate for the fiscal year in which the charges are incurred. MDT will not recover indirect costs on Local Agency charges to the Project. See Table 1 below.
4. The Local Agency will be billed in advance for its share of MDT charges, including indirect costs. The billing for the Project's preliminary engineering (PE) phase for MDT charges will be sent within 30 days of this Agreement being signed. The billing for the Project's Construction Engineering (CE) and Construction (CN) phases will be sent no fewer than sixty (60) days prior to the Project's anticipated advertisement for letting.
5. The Local Agency will submit payment to MDT within thirty (30) days of billing. Payments to this Project will be provided to MDT in the form of a check. The payment(s) should be sent to MDT at:

Montana Department of Transportation
Attention: Accounting Processing Section
2701 Prospect Avenue
P.O. Box 201001
Helena, MT 59620-1001

6. MDT will not submit programming requests to FHWA for individual Project phases until the required local funds have been transferred to MDT. The Project funding for CE & CN phases must be agreed upon by the Local Agency and MDT prior to the project advancing past the PE phase. The Local Agency shall not advertise for construction until the Project has been authorized by FHWA for the funds to be reimbursable.
7. If payment is not made by the Local Agency within the thirty (30) day period, interest on the unpaid amount will accrue at the rate of 10% per year and continue to accrue until paid in full.

8. MDT will not participate in any future funding Agreement with the Local Agency until full payment, including any interest, is received from the Local Agency.
9. Local Agency agrees that if the Local Agency terminates Project development at any time, it will reimburse MDT for all costs incurred by MDT up to the date of the stoppage, including any required payback of Federal funds already expended on the Project.
10. The current Project cost estimate, including IDC and inflation, is shown in Table 1. This estimate will be updated, until Project closeout, at Project milestones and/or as more refined estimates become available. Any such revisions will be incorporated into this Agreement via Amendment, in accordance with the General Terms and Conditions.
11. The Local Agency's Project Manager will inform the MDT point of contact as soon as possible of anything that it appears will result in a cost increase and will discuss with MDT the need for any possible additional funds, alternative designs, and/or reduction of the Project's scope and will consider MDT's comments and concerns about the additional costs and/or alteration in scope or design. None of this will prevent, delay, or excuse the Local Agency from paying for any additional costs deemed necessary by MDT.
12. The Local Agency agrees to award the Project using Federal and Local Agency matching funds, provided that the lowest responsive bid does not exceed the allowable overrun percentage shown in Table 2.
13. If the lowest responsive bid exceeds the allowable overrun percentage, as listed in Table 2, the Local Agency will contact MDT to determine a funding solution agreeable to both Parties.
14. The Parties understand that it is possible that the estimated cost of the Project's construction may be exceeded once the Project has begun.

Table 1 - Project Cost Estimate

Project Phase	Total Cost of Phase	Federal Funds	State Matching Funds	Local Agency Matching Funds	Local Agency Additional Funds
Total Preliminary Engineering (PE)	\$60,000	\$51,948	\$0	\$8,052	\$0
PE - Local Agency	\$45,000	\$38,961	\$0	\$6,039	\$0
PE - MDT	\$15,000	\$12,987	\$0	\$2,013	\$0
Construction (CN)	\$165,000	\$142,857	\$0	\$22,143	\$0
CN - Local Agency					
Total Construction Engineering (CE)	\$33,529	\$29,029	\$0	\$4,500	\$0
CE - Local Agency	\$28,500	\$24,675	\$0	\$3,825	\$0
CE - MDT	\$5,029	\$4,354	\$0	\$675	\$0
Right-of-Way (R/W)	\$0	\$0	\$0	\$0	\$0
R/W - Local Agency					
Incidental Construction (IC)	\$0	\$0	\$0	\$0	\$0
IC - Local Agency					
Subtotal	\$238,500	\$206,493	\$0	\$32,007	\$0
Local Agency					
Subtotal	\$20,029	\$17,341	\$0	\$2,688	\$0
MDT					
IDC (9.90%)	\$1,983	\$1,717	\$0	\$266	\$0
Grand Total	\$260,512	\$225,551	\$0	\$34,961	\$0

The above costs are estimates and include inflation and current IDC. The rows above are labeled with "MDT" and "Local Agency." The MDT rows are costs originating from MDT to provide oversight. The Local Agency rows are costs originating from the Local Agency for project development, construction, and construction engineering. Both MDT and Local Agency rows are billed to Federal Funds (TA) and Local Agency Matching Funds. The Indirect Cost Rate (IDC) only applies to the MDT rows.

Table 2 - MDT Guidelines for Awarding Construction Agreements
(Used to determine allowable overrun cost participation based on construction bid award amount)

LOWEST RESPONSIVE BID	ALLOWABLE OVERRUN %
UNDER \$50,000	30%
\$50,000 - \$200,000	25%
\$200,000 - \$500,000	20%
\$500,000 - \$2,000,000	15%
OVER \$2,000,000	10%

ARTICLE VII. GENERAL OBLIGATIONS OF THE PARTIES

1. The Local Agency and MDT agree that the Project is a pilot project for a revised Local Agency Guidelines (LAG) process and will utilize the guidance set forth in the existing MDT LAG Manual (September 2013) where applicable and practical. The Local Agency and MDT agree to work in partnership to resolve any requirements of the LAG Manual that are not practical or feasible in the delivery and administration of this Project.
2. The Parties shall manage the delivery of the Project phases and Project areas of responsibility as identified below.
 - a. **Project Phases:**
 - i. [PL] Program Development (Planning) - **MDT**
 - i. [PE] Project Development (NEPA/MEPA, Design, Permitting) - **Local Agency**
 - ii. [RW] Right of Way Acquisition – **Local Agency**
 - iii. [IC] Utilities – **Local Agency**
 - iv. [CN/CE] Advertising Bid & Award – **Local Agency**
 - v. [CN & CE] Construction Contract Admin and Closeout - **Local Agency**
 - b. **Local Agency Project Area Responsibilities:**
 - i. Consultant selection and contract administration;
 - ii. Design;
 - iii. Environmental document preparation;
 - iv. Advertisement, bid, and award;
 - v. Civil Rights project management oversight, which includes compliance with the Americans with Disabilities Act (ADA), Disadvantaged Business Enterprise (DBE), Equal Employment Opportunity (EEO), On the Job Training (OJT), and Title VI Programs; and
 - vi. Construction contract administration.
 - c. **MDT Project Area Responsibilities:**
 - i. Civil Rights reporting for ADA, DBE, EEO, OJT, and Title VI Programs;
 - ii. Review of Environmental documents and/or submittal of certification to FHWA that the action qualifies for a Categorical Exclusion (CE) for projects as allowed in section IV.A. of the Programmatic Agreement Regarding the Processing of Action Classified as Categorical Exclusions for Federal-Aid Highway Projects and Amendment 1;
 - iii. Final Environmental certifications;
 - iv. Final certification of Right of Way (RW) transactions;
 - v. Final certification of Utilities;

- vi. Requests for authorization of FHWA funds;
 - vii. Public interest findings determinations; and
 - viii. Project final acceptance.
- d. Federal Highway Administration (FHWA) Project Area Expectations:
- i. Review of National Environmental Policy Act (NEPA) environmental documents as described in Section IV.B of the Programmatic Agreement Regarding the Processing of Action Classified as Categorical Exclusions for Federal-Aid Highway Projects and Amendment 1 and coordination of Endangered Species Act (ESA) consultation with USFWS;
 - ii. Review of MDT's ADA, DBE, EEO, OJT, and Title VI programs;
 - iii. Authorization of FHWA funds;
 - iv. "Buy America" waiver requests;
 - v. Experimental features and special experimental projects; and
 - vi. Periodic audits of program and specific projects.
3. The Parties agree to the following Project personnel and communication structure:
- a. Project Manager – will be appointed and retained by the Local Agency and is the person with responsible charge as defined in 23 CFR 172.9. The Local Agency may appoint and retain different Project Managers for various Project phases and will inform MDT of any change in Project Management.
 - b. Local Agency Liaison – will be appointed and retained by MDT to provide assistance as requested by the Local Agency. This liaison may be different MDT personnel during the design and construction phases.
 - c. MDT Program Manager – will work directly with the Project Manager and Local Agency Liaison as needed.
 - d. Local Agency Engineer – will provide principal oversight dedicating reasonable support and resources necessary for successful delivery of the Project.
4. Local Agency LAG Obligations
- a. The Local Agency shall track internal costs and Project expenses in an accounting system that can allocate costs by project and can code between allowable and unallowable costs.
 - b. The Local Agency shall provide initial Project budget estimates to MDT broken out by phase and by work planned to be performed with internal Local Agency staff and work planned to be performed by consultants and/or contractors.
 - c. The Local Agency shall present reimbursement requests for the Eligible Costs incurred by Local Agency on behalf of the Project directly to MDT's Local Agency Liaison for review and approval. Such invoices shall identify the

Project, UPN Number, Agreement number, Project phase, amount charged to each phase (e.g., PE, RW, CN), reimbursement request number, and itemize all expenses for which reimbursement is claimed. The Local Agency shall submit invoices to MDT no more often than monthly but at least once every three months, based on actual expenses incurred, and must clearly specify the percentage of completion of the Project. The Local Agency shall also include with the invoice a Project progress report or summary that describes work accomplished for the invoicing period, and work expected for the next invoicing period.

- i. Eligible Costs are the Local Agency's actual Project costs that are:
 1. Reasonable, necessary and directly incurred in the development of the Project;
 2. Documented in accordance with generally accepted accounting principles established by the Governmental Accounting Standards Board; and
 3. Eligible or allowed uses of Federal and State of Montana Funds.
 - ii. Eligible Costs may include Indirect Costs (IDC) rates that have been approved by MDT.
 - iii. MDT, in its sole discretion, determines whether a particular cost satisfies the criteria set forth in this Agreement and is an Eligible Cost.
 - iv. The Local Agency may appeal any determination of an Ineligible Cost for further review, upon which, MDT will provide a detailed explanation of the determination, including any statute or program guidelines used to make such determination.
- d. The Local Agency shall have a written policy for the selection of engineering consultants that meets the requirements of 23 CFR 172. The Local Agency may choose to adopt MDT's consultant selection policy, modified (in writing) to be applicable to Local Agency personnel.
 - e. The Local Agency shall meet the requirements of 23 CFR Part 636 and Mont. Code Ann. Title 18 regarding design-build contracts. The Local Agency shall have a written procedure for design-build contracts, if applicable to this Project, or may choose to adopt MDT's design-build guidelines.
 - f. The Local Agency shall develop a Project delivery schedule, and status it no less than on a quarterly basis. The schedule will include milestones of major Project phases (PE, RW, I/C, CN, and CE).
 - g. The Local Agency shall provide notice to MDT when subsequent Project phases (RW, IC, CN, CE) are ready to be programmed. This notice shall be provided at least three weeks prior to needed authorization for the phase to begin.

- h. The Local Agency shall not place or plan to place permanent Project features outside documented public right-of-way. If additional right-of-way (fee acquisition, easement, or temporary permits) are required, a RW phase will be initiated.
 - i. The Local Agency shall be financially responsible for any federal payback required as a result of the Local Agency's breach of this Agreement.
 - j. The Local Agency shall not begin RW, IC, CE, or CN until the Project NEPA/MEPA document has been signed and approved. The Local Agency is encouraged not to begin final design activities until NEPA/MEPA documents are signed.
 - k. If performing these phases, the Local Agency shall be responsible to complete environmental, RW, railroad, and utility certification prior to requesting programming for the construction (CN) phase.
 - l. The Local Agency will utilize the Montana Public Works Standard Specifications, MDT Standard Specifications, or any combination thereof, for the administration of the Project, including construction inspection and materials testing.
 - m. The Local Agency shall include MDT in preliminary plan reviews and document comment resolutions. MDT's review shall include Americans with Disabilities Act (ADA) compliance, constructability, quantities, materials, and roadway geometrics.
 - n. The Local Agency shall develop the Project plans and specifications in accordance with all applicable federal regulations and guidelines, including but not limited to ADA, Public Rights-of-Way Accessibility Guidelines (PROWAG), Manual on Uniform Traffic Control Devices (MUTCD), Buy America/Build America (23 CFR 635.410/2 CFR Part 184) etc.
 - o. The Local Agency shall support MDT in delivering this Project in accordance with all federal and state requirements associated with federal funding.
5. MDT LAG Obligations
- a. MDT shall submit Project phase programming requests to FHWA.
 - b. MDT shall provide timely cost reimbursements to the Local Agency upon properly completed reimbursement requests.
 - c. MDT shall verify the completeness of the NEPA/MEPA documentation and provide a recommendation to the Local Agency when to begin work on final design activities.
 - d. MDT shall provide final certification of the environmental, RW, railroad, and utilities, based on information and recommendations provided from the Local Agency.

- e. MDT shall be financially responsible for any federal payback required as a result of MDT's breach of this Agreement.
- f. MDT shall consolidate all Project comments during plan reviews to avoid conflicting direction, as well as strive to provide comments no later than 14 days from the release of an agreed-upon plan package release date.
- g. MDT shall support the Local Agency in its efforts to successfully complete this Project by being responsive and providing guidance as requested.
- h. Upon request, MDT shall promptly provide personnel for a final Project walk-through and completion certification.

ARTICLE VIII. GENERAL TERMS AND CONDITIONS

1. **Term** – The term of this Agreement shall be ten (10) years. After the initial ten (10) year term, this Agreement will renew automatically, for successive one (1) year terms, unless superseded by a new Agreement between the Parties.
2. **Termination** – This Agreement may be terminated by either party if the other party violates or breaches any term, condition, or article of this Agreement and the breaching party has failed to correct (or reasonably initiate correction) within 60 days of receiving notice in writing addressed to the breaching party's representative, of such violation or breach.
3. **Other Agreements** – Other Agreements pertaining to the Project area remain in full force and effect. In the case of a conflict between this Agreement and a previously executed Agreement, the terms of this Agreement apply.
4. **Hold Harmless & Indemnification**
 - a. The Local Agency 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 favor of or asserted by the Local Agency'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 Local Agency, its agents, or sub-contractors, under this Agreement, except the negligence of MDT.
 - b. The State and MDT agrees to protect, defend, indemnify, and hold the Local Agency, 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 Local Agency.

5. Insurance

- a. General Requirements: Each Party shall maintain for the duration of this Agreement, at its own cost and expense, insurance, a self-funded plan, or risk-pooling agreement covering claims for personal or bodily injury, death, or damage to property that may arise from or in connection with the performance of duties and obligations in this Agreement by each Party, its agents, employees, representatives, assigns, or sub-contractors. This coverage shall cover such claims as may be caused by any negligent act or omission.
 - b. General Liability: Each Party shall purchase and maintain coverage with single and combined single limits for bodily injury, personal injury, and property damage at or exceeding the requirements of Mont. Code Ann. § 2-9-108 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 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. Workers' Compensation Insurance: The Local Agency 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. Proof of compliance must be in the form of worker's compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the Local Agency nor its contractor, subcontractors, and employees are employees of MDT. This insurance/exemption must be valid for the entire Agreement period.
 - d. General Provisions: All 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 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.
6. Public Safety – If any repairs to the elements of the Project must be performed to address or prevent a public hazard, the Local Agency will immediately protect the

area from public access, contact the appropriate MDT Area Maintenance Office, and make reasonable and timely effort to correct or repair the hazard.

7. Invoicing – If MDT incurs any costs resulting from this Agreement, MDT shall be entitled to be compensated for such costs by the Local Agency and the Local Agency shall pay the same within thirty (30) days of its receipt of such invoices.
 - i. Invoices will be sent to:

Yellowstone County
Attn: Russell Burton
Yellowstone County Comptroller
P.O. Box 35003
Billings, MT 59107-5003
406-256-2831
 - ii. Payments shall be made to:

Montana Department of Transportation
Attention: Accounting Processing Section
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001
8. Indirect Costs (IDC) – Mont. Code Ann. § 17-1-106 requires all state agencies, including MDT, which receive non-general funds to identify and recover indirect costs (IDC) in addition to direct project costs. MDT's IDC rate is recalculated annually, as defined in 2 CFR Part 200, Appendix VII. The IDC rate in effect for the fiscal year MDT incurs the costs will be charged to the Local Agency in addition to the direct project costs.
9. 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.
10. Binding Effect – The benefits and obligations set forth in this Agreement shall be binding upon, and inure to the benefit of, the respective successors, administrators and assigns of the Parties.
11. 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 of principal and agent or create any partnership joint venture or other association between the Parties.
12. Non-Discrimination – The Local Agency will require that during the performance of any work arising out of this Agreement, the Local Agency for itself and its assignees and successors shall comply with all applicable non-discrimination regulations set forth in Attachment "A."

13. ADA – MDT requires that any construction or maintenance resulting from this Agreement must include appropriate pedestrian facilities that meet or exceed current MDT standards for accessibility as set forth by the United States Department of Justice 2010 ADA Standards for Accessible Design, United States Access Board Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way, and MDT's Detailed Drawings, 608 series.
14. Audit – The Local Agency 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 Local Agency maintains in connection with this Agreement.
15. Utilities – This Agreement is subject to the right of any private or public utility entity now lawfully occupying the right-of-way to continue to operate and maintain utility facilities thereupon. Copies of existing utility permits may be obtained from the MDT District Utility Agent.
16. 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.
17. Access and Retention of Records – The Local Agency agrees to provide MDT, the State of Montana Legislative Auditor, or their authorized agents access to any records necessary to determine compliance with the Agreement. The Local Agency 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.
18. Severability – In the event that any one or more of the provisions of this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
19. Representatives
 - a. Local Agency's Representative: The Local Agency's Representative for this Agreement shall be the Local Agency Manager or such other individual as Local Agency shall designate in writing. Whenever approval or authorization from or communication or submission to Local Agency is required by this Agreement, such communication or submission shall be directed to the Local Agency's Representative and approvals or authorizations shall be issued only by such Representative; provided, however, that in exigent circumstances when Local Agency's Representative is not available, MDT may direct its communication or submission to other designated Local Agency personnel or agents.

- b. MDT's Representative: The MDT Representative for this Agreement shall be the District Administrator or Area Maintenance Chief 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, Local Agency may direct its direction or communication or submission to other designated MDT personnel or agents.
20. 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.

IN WITNESS WHEREOF, MDT's authorized representative has hereunto signed on behalf of the State of Montana, and the Local Agency's authorized representative on behalf of the Local Agency, has signed and affixed hereto the seal of the Local Agency.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

By _____
Montana Department of Transportation

_____ Date

Approved for Legal Content

Approved for Civil Rights

The above resolution was adopted by the Board of County Commissioners this _____ day of _____, 20__.

YELLOWSTONE COUNTY, MONTANA

By _____
Mark Morse, Chairman, Board of County
Commissioners

ATTEST:

By _____
Chris White, Board of County Commissioners

Jeff Martin
Clerk and Recorder

By _____
Mike Waters, Board of County Commissioners

ATTACHMENT A:
MDT NONDISCRIMINATION AND
DISABILITY ACCOMMODATION NOTICE

ATTACHMENT B:
PROJECT LOCATION MAP

JOHNSON LANE SIDEWALK CONCEPTUAL DESIGN (SHEET 1 OF 2)

ROCKWOOD ST TO OLD HARDIN RD
WITHIN
YELLOWSTONE COUNTY

APRIL 2025
BILLINGS, MONTANA

PREPARED FOR : YELLOWSTONE COUNTY, MONTANA
PREPARED BY : **sarbell**



JOHNSON LANE SIDEWALK CONCEPTUAL DESIGN (SHEET 2 OF 2)

ROCKWOOD ST TO OLD HARDIN RD
WITHIN
YELLOWSTONE COUNTY

PREPARED FOR : YELLOWSTONE COUNTY, MONTANA
PREPARED BY : **sanbell**

APRIL 2025
BILLINGS, MONTANA

