

RESOLUTION NO. 3989

A RESOLUTION APPROVING AN AMENDMENT TO THE MILES CITY AREA TRANSPORTATION PLAN SUBRECIPIENT AGREEMENT EXTENDING TERM OF AGREEMENT.


WHEREAS, the City of Miles City and the Montana Department of Transportation entered into a funding agreement related to the Miles City Area Transportation Plan on April 2, 2105, which is still in the process of being developed;

AND WHEREAS, the parties desire to extend the term of such agreement to ensure that completion occurs within the contract period;

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:


1. "Amendment 1 to the Miles City Area Transportation Plan Subrecipient Funding Agreement Between The Montana Department of Transportation and The City of Miles City," attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by the Council;
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and to bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 11th DAY OF OCTOBER, 2016.



John Hollowell, Mayor

ATTEST:


Lorrie Pearce, City Clerk

AMENDMENT I TO THE
MILES CITY AREA TRANSPORTATION PLAN
SUBRECIPIENT FUNDING AGREEMENT
BETWEEN

THE MONTANA DEPARTMENT OF
TRANSPORTATION AND
THE CITY OF MILES CITY

The City of Miles City (SUBRECIPIENT) and the Montana Department of Transportation (DEPARTMENT) do hereby agree and acknowledge that the Miles City Area Transportation Plan Update Funding Agreement entered into April 1, 2015, is amended as follows:


Section 2, Time of Performance The term of this agreement is extended to twenty (20) months unless terminated before this date as provided in Section 10 of the initial agreement.

This change is necessary to accommodate an extended schedule and does not affect agreed upon funding or scope.

The agreement between the LOCAL AUTHORITIES and DEPARTMENT executed on April 1, 2015, and as amended herein, constitutes the entire agreement between the parties and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in written agreement, shall be binding or valid.

WITNESS WHEREOF, the parties have caused this agreement to be executed.

CITY OF MILES CITY

By: 
Mayor Council President
City of Miles City

Date: October 11, 2016

STATE OF MONTANA - DEPARTMENT OF TRANSPORTATION

By: 
Transportation Planning Division

Date: 10/19, 2016

Approved for Legal Content:

By: 
Department Legal Services

Date: SEPTEMBER 23, 2016

February 25, 2015

**SUBRECIPIENT AGREEMENT
FOR THE
MILES CITY AREA
TRANSPORTATION PLAN**

This Agreement is made and entered into by and between the City of Miles City (SUBRECIPIENT), and the Montana Department of Transportation (DEPARTMENT). Miles City DUNS is 134230325. CFDA # 20.205 Highway Planning and Construction awarded in FFY2015 (October 01, 2014 – September 30, 2015). The parties to this Agreement acknowledge the following:

1. Purpose of Agreement

This agreement documents funding responsibilities for the development of the MILES CITY Area Transportation Plan (PLAN). The scope of the transportation plan is described in Exhibit A.

2. Time of Performance

The term of this agreement will be for eighteen (18) months from the signing of this agreement unless extended by mutual agreement or terminated before that date as provided in Section 9, below.

3. Roles and Responsibilities

A. All Parties Agree That:

1. Development of the PLAN will include monthly meetings with technical advisory committee; meetings will be held in Miles City with a conference call line.
2. Development of plan will include at least two Informational Meetings for the public to attend.
3. Upon completion, plan will be adopted by SUBRECIPIENT following local planning process.
4. Consultant for this plan will have a background in Transportation Planning with experience developing Long Range Transportation Plans.

B. Subrecipient:

1. Invoices will be submitted on a monthly basis with a 20% local/80% federal cost share
2. Will ensure deliverable deadlines are met and consultant contract stays within established study schedule and scope.
3. Will allow MDT one week to review draft deliverables before distribution to technical advisory committee.

C. MDT:

1. Will provide technical assistance for modeling components and subsequent model runs as necessary.
2. Will participate in Technical Advisory Committee and attend all meetings either in person or conference call.
3. Will reimburse Subrecipient within 30 days of submitting invoice, with a 20% local/80% federal cost share.

4. Compensation

The Miles City Area Transportation Plan will be funded by the SUBRECIPIENT and DEPARTMENT as shown by the following itemized financial allocations. Montana's total federal award of SPR-PL funds were \$7,848,427. FHWA is the federal awarding agency. MDT is the pass through entity.

Transportation Plan

City Funds	(20 %)	\$ 30,000
MDT Funds	(80 %)	\$ 120,000 (including indirect cost)

Total maximum: \$150,000

The SUBRECIPIENT will not reduce their share of the project cost unless there is a proportional cost reduction to the DEPARTMENT. The total payment by the DEPARTMENT to complete the plan shall not exceed the above-stated funding. Any scope revision or increase in project costs must be agreed to beforehand in writing.

Section 17-1-106 MCA requires any state agency, including MDT that receives non-general funds to identify and recover its indirect costs. These costs are in addition to direct project costs. MDT's indirect cost rate is determined annually as a percentage of the project's direct costs to cover the project's share of MDT's indirect costs as defined by 2 CFR 200.414 for State & Local Governments. MDT's current indirect cost rate is 9.13% for state fiscal year 2015 (July 1, 2014 to June 30, 2015).

For this project, MDT will include a charge for the indirect costs at the current fiscal year indirect cost rate (as noted above 9.13% thru June 30, 2015), which amount will be applied toward the DEPARTMENT share of project contribution. Note: If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the project.

The SUBRECIPIENT will submit invoices for payment along with a letter approving payment and supporting documentation substantiating the amount requested to Statewide & Urban Planning Section, Transportation Planning Division, Montana Department of Transportation, 2701 Prospect Avenue, Helena, MT 59620. DEPARTMENT funds will be used to reimburse the SUBRECIPIENT for costs attributable to the transportation study. The DEPARTMENT has the authority to review and approve payment of the invoices submitted by the SUBRECIPIENT. Reimbursement will not be made for any costs not clearly and accurately supported by the SUBRECIPIENT's records and not submitted within sixty days of the date originally incurred. The DEPARTMENT shall reimburse the SUBRECIPIENT within 30-days provided all the proper documentation has been submitted.

The DEPARTMENT reserves the right to withhold 10% of its proportionate share of the total project cost until all supported claims filed with the DEPARTMENT have been settled.

5. Liaison

The liaison person for the DEPARTMENT is Carol Strizich, 2960 Prospect Ave, Helena MT. 59620. Phone (406) 444-9240, Statewide & Urban Planning Section, Transportation Planning Division. The liaison person for the SUBRECIPIENT is Dawn Colton, Miles City Community Services & Planning Department, 17S 8th Street, Miles City, MT 59301. Phone (406) 874-8613. All reports, scope revisions, partial and final payment requests, and coordination of activities will be submitted to the Transportation Planning Division for acceptance by the DEPARTMENT.

6. Ownership of Documents

All notes, calculations, computer runs, specifications, reports, special studies, and other data prepared or collected under this agreement will become the property of the SUBRECIPIENT upon completion of the study. The SUBRECIPIENT will provide a printed copy and an electronic copy of the completed study to the DEPARTMENT upon completion of the study.

7. Access to Records

It is expressly understood that the SUBRECIPIENT is required to maintain full records of its performance and further to allow access to these records by DEPARTMENT and the Montana Legislative Auditor and Legislative Fiscal Analyst when required by law. The SUBRECIPIENT agrees to create and retain records supporting this Agreement for a period of three years after the completion date of this Agreement or the conclusion of any claim, litigation or exception relating to this Agreement taken by the State of Montana or a third party.

8. Insurance

SUBRECIPIENT will require any subcontractor performing work under this agreement to provide proof of the following insurance coverage prior to the date upon which work is to begin. The proof of insurance or exemption must be valid for the entire agreement period.

- a. Comprehensive general liability insurance, including vehicle liability insurance, with limits acceptable to the SUBRECIPIENT.
- b. Workers Compensation Insurance coverage valid in the State of Montana or proof of exemption thereof.

9. Nondiscrimination

The SUBRECIPIENT will require during the performance of any work arising out of this agreement that the SUBRECIPIENT, for itself, its assignees and successors, shall comply with all nondiscrimination regulations shown in Exhibit "C".

10. Termination

This agreement may be terminated for convenience by either party by that party mailing or faxing a written notice of termination to the other's liaison person. The DEPARTMENT may also terminate this agreement for default. If termination occurs due to default, the notice shall state the manner of the default, and offer the SUBRECIPIENT an opportunity to explain the non-performance. If the DEPARTMENT finds that the SUBRECIPIENT has a reasonable excuse for non-performance, which is beyond the control of the SUBRECIPIENT, the DEPARTMENT may set up a new work schedule to allow the completion of the agreed upon work.

In any termination, the DEPARTMENT will make its contractual payments proportionate to the work performed at the time of termination and the SUBRECIPIENT shall account for any property in its possession paid for with funds received from the DEPARTMENT or supplied to it by the DEPARTMENT.

11. Liability

The Department will not be liable for any claims or suits related to the SUBRECIPIENT financial participation in the proposed plan, and the SUBRECIPIENT will hold the Department harmless and immune from any such suits, and will indemnify the Department in the event of any loss incurred as a result of such claim or lawsuit.

12. Litigation

Controversy arising from this sub-recipient agreement may result in litigation. Arbitration is not available. This sub-recipient agreement shall be governed by Montana law.

13. Venue

In the event of litigation concerning this Agreement, venue shall be in the First Judicial District of the State of Montana, Lewis and Clark County.

14. Agreement Modification

Any change in this agreement must be by written agreement of the parties.

15. Notice

All notices arising out of, or from, the provisions of this agreement shall be in writing and given to the parties at the address of the party above, either by regular mail or delivery in person.

16. Severability and Integration

If any single part, or parts, of this agreement are determined to be void, the remaining parts will remain valid and operative. This agreement, as written, expresses the total, final and only agreement of the parties relevant to its subject matter. No provision, expressed or implied, arising from any prior oral or written request, bid, inquiry, negotiation, contract, or any other form of communication shall be a provision of this agreement unless specifically provided within the written terms herein.

17. Audit Requirements

The LOCAL AUTHORITY may be subject to the audit requirements of 2 CFR 200 Subpart F if the audit threshold in 2 CFR 200.501 is met. An audit must be conducted in compliance with 2 CFR 200 Subpart F if required. The audit must be completed and the data collection form and reporting package submitted to the Federal Audit Clearinghouse within the earlier of 30 calendar days after the receipt of the auditor's report(s) or nine months after the end of the audit period. For local governments and school districts, the LOCAL AUTHORITY will provide the report to the State of Montana, Department of Administration, Local Government Services Bureau. All other subrecipients such as Tribal Communities and Non-Profit Organizations will provide the report to the State of Montana, Department of Transportation, Audit Services if audit findings are discovered.

18. Debarment and Suspension (E.O.s 12549 and 12689)

The Grantee shall obtain from its third party contractors certifications required by Department of Transportation regulations, "Government-wide Debarment and Suspension (Non-procurement)," 49 CFR Part 29, and otherwise comply with the requirements of those regulations a list of debarred entities is located at <https://www.sam.gov/portal/public/SAM/>.

19. Conflict of Interest (2 CFR 200.112)

The Subrecipient must disclose in writing any potential conflict of interest to the MDT in accordance with applicable Federal awarding agency policy.

20. Mandatory Disclosures (2 CFR 200.113)

The Subrecipient must disclose, in a timely manner, in writing to the MDT all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338, including suspension or debarment.

21. Internal Controls (2 CFR 200.303)

The Subrecipient must establish and maintain effective internal controls that provide reasonable assurance to the MDT that the Subrecipient is in compliance with Federal statutes, regulations, and terms and conditions of the Federal award.

22. Political Activity (Hatch Act)

The Subrecipient will comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508) which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

23. Certification Regarding Federal Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements. The undersigned certifies, to the best of his or her knowledge and belief, that:

A. 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 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 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.

B. 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.

C. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose 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 section 1352, title 31, U.S. Code. 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.

24. Restriction on State Lobbying

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

WITNESS WHEREOF, the parties have caused this agreement to be executed.

City of Miles City

By: *C. A. Stoney*
Mayor
City of Miles City

Date: 3/25/15, 2015

STATE OF MONTANA - DEPARTMENT OF TRANSPORTATION

By: *[Signature]*
Transportation Planning Division

Date: 4/1/15, 2015

Approved for Legal Content:

By: *Carol Shell Morris*
Department Legal Services

Approved for Civil Rights Content:

By: *[Signature]*
Department Civil Rights

MILES CITY AREA TRANSPORTATION PLAN Agreement Exhibit A (General Scope)

The *Miles City Long Range Transportation Plan (LRTP)* will guide development of and investment in the community's transportation systems. The Plan will assess applicable background information, analyze options and alternatives while incorporating meaningful input from citizens and local officials, and provide a framework for future efforts within the context of state and federal rules, regulations, and budget allocations.

The LRTP is intended to balance safety and cost-effectiveness in a transportation system that ensures adequate mobility to all persons, accommodates planned growth, facilitates economic development, recognizes fiscal reality, and maintains an acceptable standard of safety. A consultant will be utilized to facilitate and produce the plan.

The scope of the proposed Miles City Long Range Transportation Plan will include the following:

- Coordinate transportation planning with existing and future land use and community comprehensive plans.
- Improvement of regional transportation circulation and identify primary travel demands.
- Promote a safe, reliable transportation network.
- Identify improvement priorities, strategies, and policies.
- Identify funding sources and implementation process.

Other Items to be included in the scope:

- Planning horizon is 2035 (typically 20 years).
- City and County will inventory existing plans, policies, and data that need to be considered.
- Consider existing conditions, deficiencies, and needs for all of the following modes in the plan: vehicle, pedestrian, bicycle, and transit.
- Improvement option analysis.
- Consider a chapter on access management, approach ordinance, and approach permitting.
- Identification of Stakeholders.
- Outline a public involvement plan.
- Financial analysis identifying various transportation funding sources (Federal, State, Local, and Private) and consideration for impact fees (if desired).
- Identification of capital improvements and an implementation plan.
- Potential transportation system management (TSM) improvements, such as signal synchronization, new signals, turning bays, one-way street designation, etc.
- MDT will develop a base year model and perform model runs. The consultant will review the base year model, coordinate development of the future land-use forecasts with the local government, and identify alternative model runs to be performed by MDT, and analyze and report on model results.
- Consultant will review and analyze existing data and reports and supplement as needed, identify problems, develop and analyze alternatives, implement public involvement plan, identify improvements and an implementation plan, and prepare draft and final reports.

Deliverables

- Technical Memos as appropriate
- Draft Plan Document (bound hard copies)
- Completed Plan Document (bound hard copies)
- All electronic files
- Presentation materials for Public Informational Meetings

Goals

These goals are intended to direct the overall direction of the LRTP towards the community's vision.

Goal 1: Preserve and Maintain the Existing Transportation System

The transportation system in the Miles City area is aging while available funding is insufficient for necessary maintenance activities. There is competition between funding for new projects and maintenance and operations of the existing system. The existing transportation system should be enhanced through preservation and maintenance in order to maximize efficiency and reduce the need for new infrastructure investment.

Objective 1.1: Assess condition of main thoroughfares; prioritize preservation and maintenance schedule.

Objective 1.2: Improvement of regional transportation circulation and identify primary travel demands.

Objective 1.3: Consider existing conditions, deficiencies, and needs for all of the following modes in the plan: vehicle, pedestrian, bicycle, and transit.

Objective 1.4: Identify improvement priorities, strategies and policies.

Goal 2: Mobility & Accessibility for People & Goods

The transportation system should be developed to allow mobility for all and provide appropriate access to employment, housing, services and recreation areas. An efficient transportation system allows people to move from place to place in as direct a route as possible while allowing them to reduce the amount of time spent in travel. Increased connectivity allows citizens to make route decisions and mode choices based on health, desirability, traffic and road conditions, or desired destinations.

Objective 2.1: Identify potential transportation system management (TSM) improvements, such as signal synchronization, new signals, turning bays, one-way street designation, etc.

Objective 2.2: Improve routes to current and emerging business centers, employment, housing, services and recreational areas for vehicle, pedestrian, bicycle and mobility-aided traffic. High priority areas are: Downtown, Valley Drive East, S. Haynes Ave, Hwy 59 S and Baker Hwy (US 12).

Objective 2.3: Access current truck route. Recommend improved route or truck bypass considering future traffic volume and patterns related to regional growth.

Objective 2.4: Conduct improvement option analysis.

Goal 3: Provide a Safe, Secure, and Healthy Transportation System

The transportation system should be enhanced to improve community safety, security and health by increasing efficiency and providing a system that is easily accessed by all users. Reducing crashes, improving emergency response times, and providing evacuation routes in the event of a natural disaster will assist in improving the safety and security of the transportation system. The transportation system should also serve the community's population by providing safe and secure alternatives to motorized traffic for citizens utilizing mobility aids and bike/walk paths. Educational programs that help travelers understand the particular safety concerns associated with various travel modes can also help all users travel with increased confidence and security.

Objective 3.1: Identify and recommend improvements to dangerous and/or inefficient intersections. Priorities are Horizon Parkway & Hwy 59 S (Southgate); S Haynes Ave between the intersections of Main Street and Interstate 94; all railroad at-grade crossings and railroad underpass.

Objective 3.2: Traffic patterns are changing as commerce and housing moves from the original town site to the south and east. Evaluate and identify effective evacuation and snow routes.

Objective 3.3: Identify mitigation measures to avoid train traffic blocking any/all crossings through the city that could prevent emergency services.

Objective 3.4: Identify improvement projects along State and Urban routes that may utilize the Pavement Preservation Program. This should include curb & gutter and sidewalks and may include pavement preservation or replacement.

Objective 3.5: Evaluate traffic impact of future railroad spurs, pipeline construction and oilfield service traffic

Objective 3.6: Improvement of regional transportation circulation and identify primary travel demands.

Objective 3.7: Improvement option analysis.

Goal 4: Encourage and Solicit Public Participation in Plan Development

Public involvement is an important component in a successful transportation planning process. Public outreach will educate the public on the critical elements of planning for the future of the transportation system. Public involvement will allow the public to voice their interests and concerns, participate in the planning of the community, and will also increase their investment in the transportation plan.

Objective 4.1: Utilize the City Website, social media, newspaper and public service announcements to educate residents of the planning process and the importance of participating.

Objective 4.2: Design methods to encourage participation by use of surveys, public meetings and news articles.

Objective 4.3: Estimate project costs or annual budget forecasts and identify potential funding sources.

Goal 5: Promote a Financially Sustainable Transportation System

A financially sustainable transportation plan is necessary in order to guide the transportation decision-making process in future years. This will help ensure the use of available funds to their maximum potential by implementing feasible improvement projects that have been previously identified. A sound financial base for the transportation system is provided through responsible management of public assets and resources and identification and implementation of funding strategies to ensure long-term balanced investment in the transportation system.

Objective 5.1: Build a plan that outlines maintenance schedules, replacement schedules, funding schemes that may include grants, loans, and SIDs.

Objective 5.2: Identify improvement priorities, strategies, and policies.

Objective 5.3: Identification of capital improvements and an implementation plan.

Objective 5.4: Financial analysis identifying various transportation funding sources (Federal, State, Local, and Private) and consideration for impact fees.

Goal 6: Link Transportation and Land Use

Linking transportation and land use planning is important to help ensure that the transportation system effectively and efficiently serves existing and future development within the community. This coordination helps ensure that existing and future industrial, commercial, and service centers and housing concentrations are adequately connected to the region's transportation system and appropriately located to preserve and enhance the quality of life in the community. This will allow transportation improvements to be designed in the context of existing and future land uses, taking into account the needs of all users. Policies and partnerships should be developed to protect the capacity of the transportation system and plan future improvements to strengthen the coordination between land use and transportation planning.

Objective 6.1: Assess the impact from development of natural resources (coal, oil & gas) on regional traffic counts and flows. Incorporate the results of this assessment into the comprehensive plans for Miles City and Custer County.

Objective 6.2: Recommend future routes considering that commerce and housing needs are moving to the south and east of the current city limits.

Objective 6.3: Consider access to local recreational areas, health centers, banking, government and agricultural services in a regional context.

Objective 6.4: Coordinate transportation planning with existing and future land use plans and community comprehensive plans.

MILES CITY AREA TRANSPORTATION PLAN

Agreement Exhibit C (Non-Discrimination and Disability Accommodation Notice)

Montana Department of Transportation (“MDT”) is committed to conducting all of its business in an environment free of discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination on the grounds of race, color, national origin, sex, age, physical or mental disability, parental/marital status, pregnancy, religion/creed/culture; political belief, genetic material, veteran status, or social origin/ancestry (hereafter “protected classes”) by its employees or anyone with whom MDT chooses to do business.

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

- (1) **Compliance with Regulations:** The SUBRECIPIENT (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 SUBRECIPIENT, 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. SUBRECIPIENT will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. Statement that SUBRECIPIENT does not discriminate on the grounds of any protected classes.
 - ii. Statement that SUBRECIPIENT 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 SUBRECIPIENT’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.
- (3) In accordance with Mont. Code Ann. § 49-3-207, SUBRECIPIENT 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 SUBRECIPIENT does not discriminate on the grounds of any protected class.
- (4) **Participation by Disadvantaged Business Enterprises (DBEs):**
 - a. If the SUBRECIPIENT receives federal financial assistance as part of this contract/agreement, the SUBRECIPIENT 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 SUBRECIPIENT assures that:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

- c. SUBRECIPIENT must include the above assurance in each contract/agreement the SUBRECIPIENT enters.

(5) Solicitation for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation, made by the SUBRECIPIENT 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 SUBRECIPIENT of the SUBRECIPIENT's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(6) Information and Reports: The SUBRECIPIENT 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 SUBRECIPIENT 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.

(7) Sanctions for Noncompliance: In the event of a SUBRECIPIENT'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 SUBRECIPIENT under the contract/agreement until the SUBRECIPIENT complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

Pertinent Non-Discrimination Authorities:

During the performance of this contract/agreement, the SUBRECIPIENT, 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. § 200d *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.*).

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 SUBRECIPIENT 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 directives issued pursuant thereto. The SUBRECIPIENT 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 SUBRECIPIENT becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the SUBRECIPIENT may request MDT to enter into any litigation to protect the interests of MDT. In addition, the SUBRECIPIENT may request the United States to enter into the litigation to protect the interests of the United States.