

COMMITTEE OF THE WHOLE

MAY 6, 2024

6:00 PM

1. Presentation by the Historic Resource Commission.

NOTICE FOR, AND AGENDA FOR, A REGULAR MEETING OF THE CITY COMMISSION, CITY OF LEWISTOWN, MAY 6, 2024 AT 7:00 P.M. AT THE CENTRAL MONTANA COMMUNITY CENTER LOCATED AT 307 W WATSON

To participate virtually the options are as follows:

To join by zoom:

<https://zoom.us/j/8486275925?pwd=dTVGbndDK253ZUJLMjRuZXU5QVpMdz09>

Meeting ID: 848 627 5925 Passcode: 59457

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES –Special Meeting April 8, 2024 & April 15, 2024

COURTESIES

PROCLAMATIONS

BOARD AND COMMISSION REPORTS

CITY MANAGER REPORT

PUBLIC COMMENT – non agenda items

CONSENT AGENDA

Acknowledgement of the claims that have been paid from April 12, 2024 to April 30, 2024 for a total of \$139,858.39

***REGULAR AGENDA – Resolutions, Ordinances & Other Action Items:**

1. Discussion and action on reappointing Tyler Thomas to serve an additional three-year term on the City of Lewistown Police Commission (**Action: approve, disapprove or amend Police Commission appointment**) City Manager Holly Phelps
2. Discussion and action on entering into a construction and maintenance agreement for a project on a portion of 1st Ave N between the Montana Department of Transportation and City of Lewistown and authorizing the City Manager to sign the agreement (**Action: approve, disapprove or amend entering into agreement and authorizing the City Manager to sign the agreement**) City Manager Holly Phelps
3. Discussion and action on authorizing the City Manager to enter into and sign an agreement between the Kiwanis Foundation and the City of Lewistown (**Action: authorize City Manager to enter into an agreement and sign the agreement**) City Manager Holly Phelps

CITIZENS' REQUESTS

COMMISSIONER'S MINUTE

ADJOURNMENT

* All citizens are invited to make comment on any agenda item prior to action being taken by the Commission

Construction and Maintenance Agreement

CM STWD(981)

Billings District ADA Upgrades

UPN 10431000

This Agreement by and between the City of Lewistown (City), and the Montana Department of Transportation (MDT, Department, or State) (collectively, Parties), establishes the responsibilities and duties of the Parties in respect to project activities on a portion of 1st Ave N located within the City of Lewistown, Montana.

Whereas, the construction will be accomplished through Uniform Project Number 10431000, Federal-Aid Project Number CM STWD(981), titled Billings District ADA Upgrades (Project) located on 1st Ave N between RP 0.000 and 0.050 and on 1st Avenue S between RP 0.000 and 0.370; and,

Whereas, State and/or Federal Highway Administration (FHWA) funds will be used to pay for the construction, the City and State must ensure that federal and state requirements are met in fulfilling its obligations to the FHWA and for the Project to remain eligible for state and/or federal funding; and,

Whereas, the Project lies on the designated National Highway System under the jurisdiction of the Montana Transportation Commission and MDT as per Mont. Code Ann. 60-2-110; and,

Whereas, Carbon Reduction Program funds (CRP) will be used for the construction of the Project; and

Whereas, the City and MDT recognize the need to construct the Project and to duly execute this Agreement in advance of construction phase programming; and,

Whereas, the City desires to have the Project constructed, the City deeming it to be a valuable and beneficial consideration, and it will perform the functions, duties and responsibilities as set forth in this Agreement;

Now, therefore, the Parties agree as follows:

ARTICLE I. GENERAL OBLIGATIONS OF MDT

1. MDT will design and award a Contract to construct the Project.
2. MDT will provide the City opportunities to participate in the Project's development, including invitation to the final inspection of the Project.
3. MDT will maintain the roadway surface, including pavement repair, pavement preservation, and snowplowing, and will maintain all features, including signals (if present) and non-decorative roadway lighting, within the roadway prism unless otherwise noted herein.

4. If the City does not fulfill any maintenance requirements stated herein, MDT may complete the required maintenance and seek compensation from the City. In doing so, MDT must first provide notice to the City allowing time to complete any such maintenance. If MDT performs such maintenance under this section, it must provide detailed invoices of such costs to the City.
5. For any maintenance requirements that are the obligation of the City, as stated herein, MDT may complete any maintenance required due to a public emergency and seek compensation from the City for any costs incurred. In doing so, MDT may first provide notice to the City, 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 City.
6. MDT is the issuing authority for all future encroachment and approach permits.

ARTICLE II. GENERAL OBLIGATIONS OF THE CITY

1. The City 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.
2. The City will provide appropriate and timely input during the Project's development.
3. The City will continue to enforce the ordinances, laws and/or regulations necessary and essential for the operations of the Project.
4. The City, at its sole expense, will maintain the City signs installed as part of this Project. For the purposes of this Agreement, "maintenance of signs", is defined as: the inspection, cleaning, repair and replacement of signs damaged through weathering, vandalism, the wind, or other means.
5. The City agrees no fixture, building, structure, or other permanent installation other than those approved by MDT shall be constructed or placed within MDT right-of-way without prior written approval from MDT.
6. The City agrees that any City-performed maintenance that occurs within MDT right-of-way must be reviewed and approved by the appropriate MDT District Maintenance Office prior to initiation of the maintenance.

ARTICLE III. PROJECT-SPECIFIC PROVISIONS

1. Construction Storm Water General Permit

- a. Upon completion of all physical work associated with construction activity, the Parties will inspect the temporary erosion and sediment control measures and devices as part of MDT's final inspection with MDT's Contractor. MDT will provide the City with the Storm Water Pollution Prevention Plan (SWPPP) package for City review. Within ten (10) days of receiving the package, the City will provide MDT with an itemized list of any outstanding records or deficiencies associated with the SWPPP. Upon MDT's and the City's approval of site conditions and Contractor records, MDT will provide the City a Permit Transfer Notification (PTN) form. The City must return the signed PTN form to MDT within ten (10) business days. MDT will forward the completed PTN form and transfer fees to the Montana Department of Environmental Quality (DEQ).
- b. Once DEQ transfers the Construction Storm Water General Permit Authorization, the City will inspect, maintain, and revise the Best Management Practice devices (BMPs) in accordance with DEQ permit requirements until final stabilization is met and permit coverage is terminated.
- c. MDT agrees to pay annual fees associated with permit coverage until termination. To assure payment, the City must forward invoices to the MDT's Environmental Services Bureau for payment.

ARTICLE IV. PROJECT-SPECIFIC FEATURES

1. Sidewalks

- a. Sidewalk Maintenance: Upon completion of the Project by the State and its Contractor, the City agrees, through the enforcement of local ordinance(s) or otherwise, to maintain the sidewalks within the Project limits and ensure they are safe and functional for the traveling public. Maintenance includes removing snow and ice, removing debris and other obstructions or impediments to safe pedestrian travel, and any and all other normally accepted maintenance practices.
- b. Sidewalk Repair: In the event either the City or MDT identifies any portion of the sidewalk within the Project limits requiring repair, the City agrees to make a good faith effort to enforce any local ordinances requiring adjacent landowners to make the necessary repairs. If the City is unable to cause the necessary repairs to be completed the City shall notify MDT. MDT will collaborate with the City to determine whether State or local funding is available to complete the necessary repairs and facilitate project nomination.

Repairs include grinding or milling down displacements; surface patching; crack sealing; replacing portions of damaged sidewalk; repairing chipped, fractured, or broken surfaces from any cause, including but not limited to frost heaving, landscaping, tree roots or encroachments, and any and all other normally accepted repair practices.

- c. Sidewalk Requiring Closure: If any portion of the sidewalk within the Project limits becomes hazardous for use, the City agrees to notify MDT and restrict access to the affected area until the condition has been remedied. MDT agrees to work with the City to expedite the necessary repairs.

ARTICLE V. 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 MDT if the City violates or breaches any term, condition, or article of this Agreement and the City has failed to correct (or reasonably initiate correction) within 60 days of receiving notice in writing addressed to the City's representative, of such violation or breach of any term, condition, or article of this Agreement. If this Agreement is terminated, the improvements become the property of MDT, without reimbursement. MDT will maintain the property as it sees fit and may remove the improvements without City or landowner approval. MDT may seek compensation for maintenance or removal of the improvements from the City.
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 City 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 City'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 City, its agents, or sub-contractors, under this Agreement, except the negligence of MDT.
 - b. The State and Department of Transportation agrees to protect, defend, indemnify, and hold the City, 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 City.

5. 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 City 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 contractor nor its employees are employees of MDT. This insurance/exemption must be valid for the entire Agreement period.

6. Public Safety

It is agreed, if any repairs to the elements of the Project must be performed to address or prevent a public hazard, the City will immediately protect the area from public access, contact the appropriate MDT District Maintenance Office, and make reasonable and timely effort to correct or repair the hazard.

7. Invoicing and Indirect Cost (IDC)

- a. If MDT incurs any costs resulting from this Agreement, MDT shall be entitled to be compensated for such costs by the City and the City shall pay the same within thirty (30) days of its receipt of such invoices.

Mont. Code Ann. §17-1-106, requires any state agency, including MDT, which receives non-general funds to identify and recover its indirect costs (IDC). These costs are in addition to direct project costs. MDT's IDC rate is determined annually as a percentage of the project's direct costs to cover the project's share of MDT's IDC as defined by 2 CFR Part 200, Appendix VII. MDT's current IDC rate is 13.56% for fiscal year 2024 (July 1, 2023 to June 30, 2024). If the work occurs or extends into fiscal year 2025 or beyond the IDC rate will be charged at the rate agreed to by MDT and the Federal Highway Administration (FHWA).

- i. Invoice will be sent to:

City of Lewistown
Attn: Finance Director/ City Clerk
305 West Watson
Lewistown, MT 59457

- ii. Payments shall be made to:
Montana Department of Transportation
Attention: Collections
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

8. 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. In case of conflict between the terms and conditions of this Agreement and the laws of the State of Montana, the laws of the State of Montana shall control.
9. 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.
10. 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.
11. Non-Discrimination – The City will require that during the performance of any work arising out of this Agreement the City, 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.

12. ADA - MDT requires that any construction 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.
13. Audit - The City 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 City maintains in connection with this Agreement.
14. 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.
15. Amendment and Modification -- This Agreement may be modified or amended only by written Addendum signed by the parties. In addition to the terms and conditions contained herein, the provisions of any Addendum 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 Addendum, the provision of the Addendum shall control, unless the provisions thereof are prohibited by law.
16. 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.
17. Representatives
 - a. City's Representative: The City's Representative for this Agreement shall be the City Manager or designee or such other individual as City shall designate in writing. Whenever approval or authorization from or communication or submission to City is required by this Agreement, such communication or submission shall be directed to the City's Representative and approvals or authorizations shall be issued only by such Representative; provided, however, that in exigent circumstances when City's Representative is not available, MDT may direct its communication or submission to other designated City personnel or agents.
 - b. MDT's Representative: The MDT Representative for this Agreement shall be the District Administrator or 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, City may direct its direction or communication or submission to other designated MDT personnel or agents.

18. 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 City's authorized representative on behalf of the City, has signed and affixed hereto the seal of the City.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

By _____
Montana Department of Transportation Date _____

Approved for Legal Content

Approved for Civil Rights

CITY OF Lewistown _____

Holly Phelps
City Manager

Attest:

Nikki Brummond
Finance Director/City Clerk

ATTACHMENT A: MDT
NONDISCRIMINATION AND
DISABILITY ACCOMMODATION
NOTICE

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.

AGREEMENT

This AGREEMENT (this "Agreement") is made effective on _____, 2024 by and between Kiwanis Foundation of Montana (hereinafter, "Kiwanis Foundation"), and the City of Lewistown Montana("City"),

Kiwanis Foundation of Montana and the City are sometimes individually referred to as "Party" and collectively referred to as the "Parties".

WHEREAS The City owns land which is located at the soccer complex in Lewistown. ;

WHEREAS, The City is desirous of building additional playground facilities ("Playground") at the complex and to that end, receives donations from private and grants from public sources to pay for the Playground and various improvements to the complex.

WHEREAS, Kiwanis Foundation of Montana proposes to provide a donation to the City of up to \$10,000 in matching funds;

WHEREAS, the Parties recognize that the Lewistown Kiwanis Club will work with the City of Lewistown to provide the funds and necessary equipment and personnel to arrive at a commitment of \$10,000 in matching funds to date and complete the project.

WHEREAS, the Parties desire to hold each other harmless from any claims and or litigation arising out of each Party's actions in connection with construction of and future use of the Playground at the soccer complex.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, Kiwanis Foundation of Montana and the City hereby agree as follows:

TERMS:

1. The Lewiston Kiwanis Club will work with the City to provide the necessary level ground where the Playground will be located at the complex.
2. The Lewistown Kiwanis Club will work with the City to obtain and secure matching funds up to \$10,000.
3. The Lewistown Kiwanis Club will work with the City, and Lewistown Kiwanis at its cost, will erect and maintain a permanent physical sign at the Park recognizing the Kiwanis Foundation of Montana, The Montana District of Kiwanis and other contributors to the Playground.
4. The Kiwanis Foundation of Montana will utilize the matching funds up to \$10,000, to assist in the purchase of materials, construction of the Playground, and assistance in choosing and ordering a Playground package.
5. Hold Harmless. The City shall fully defend, indemnify, and hold harmless Kiwanis Foundation of Montana and the Kiwanis District of Montana from any and all claims, lawsuits, demands, causes of action, liability, loss, damage and/or injury, of any kind whatsoever (including without limitation all claims for monetary loss, property damage, equitable relief, personal injury and/or wrongful death), whether brought by an individual or other entity, or imposed by a court of law or by administrative action of any federal, state, or local government body or agency, arising out of in any way whatsoever, any acts, omissions, negligence, or willful misconduct on the part of the School District, its officers, owners, personnel, employees, agents, contractors, invitees, or

volunteers. This indemnification applies to and includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and any reimbursements to Kiwanis Foundation of Montana and the Montana District of Kiwanis for all legal fees, expenses, and costs incurred by it.

6. Hold Harmless. The Kiwanis Foundation of Montana shall fully defend, indemnify, and hold harmless the City from any and all claims, lawsuits, demands, causes of action, liability, loss, damage and/or injury, of any kind whatsoever (including without limitation all claims for monetary loss, property damage, equitable relief, personal injury and/or wrongful death), whether brought by an individual or other entity, or imposed by a court of law or by administrative action of any federal, state, or local government body or agency, arising out of in any way whatsoever, any acts, omissions, negligence, or willful misconduct on the part of Kiwanis Foundation of Montana, its officers, owners, personnel, employees, agents, contractors, invitees, or volunteers. This indemnification applies to and includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and any reimbursements to the City for all legal fees, expenses, and costs incurred by it.
7. Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the actual legal power, right, and authority to make this Agreement and bind each respective Party.
8. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed writing and signed by both Parties.
9. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.
10. Attorneys' Fees and Costs. If any legal action or other proceeding is brought in connection with this Agreement, the successful or prevailing Party, if any, shall be entitled to recover reasonable attorneys' fees and other related costs, in addition to any other relief to which that Party is entitled. In the event that it is the subject of dispute, the court or trier of fact who presides over such legal action or proceeding is empowered to determine which Party, if any, is the prevailing party in accordance with this provision.
11. Entire Agreement. This Agreement contains the entire agreement between the Parties related to the matters specified herein, and supersedes any prior oral or written statements or agreements between the Parties related to such matters.
12. Enforceability, Severability, and Reformation. If any provision of the Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited. The intent of the Parties is to provide as broad an indemnification as possible under Montana law. In the event that any aspect of this Agreement is deemed unenforceable, the court is empowered to modify this Agreement to give the broadest possible interpretation permitted under Montana law.

14. Exclusive Venue and Jurisdiction. Any lawsuit or legal proceeding arising out of or relating to this Agreement in any way whatsoever shall be exclusively brought and litigated in the federal and state courts of Montana with proper venue in Fergus County. Each Party expressly consents and submits to this exclusive jurisdiction and exclusive venue. Each Party expressly waives the right to challenge this jurisdiction and/or venue as improper or inconvenient. Each Party consents to the dismissal of any lawsuit that they bring in any other jurisdiction or venue.
15. Signatures. This Agreement shall be signed on behalf of Kiwanis Foundation of Montana by Glen Wheeler, Board Member; Playground Chairman , and on behalf of the City of Lewistown,
16. Holly Phelps, City Manager, and on behalf of Lewistown Kiwanis Club, Cherie Neudick, Kiwanis President , effective as of the date first written above.

Kiwanis Foundation of Montana

By: _____

Date: _____

Glen Wheeler; Board Member; Playground Chairman

City of Lewistown

By: _____

Date: _____

Holly Phelps, City Manager

Lewistown Kiwanis Club

By: _____

Date: _____

Cherie Neudick, Kiwanis President