



Montana Department of Transportation Fast Process Agreement

Right of Way - Utilities
2701 Prospect Ave
P.O. Box 201001
Helena, MT 59620-1001

NOT TO EXCEED \$50,000 STATE'S SHARE

Project#: _____ UPN# _____ IC CN PE

Designation: _____

County: _____

Utility Company: _____

Address: _____

AGREEMENT COSTS & FINAL BILL TO BE COMPLETED BY UTILITY

Exhibit and cost estimate must be attached.

Description of work: _____

____ % **State** (Check one) Lump Sum Actual Cost Unit Cost _____ (Includes Engineering)

____ % **Utility** (Check one) Lump Sum Actual Cost Unit Cost _____ (Includes Engineering)

Total Cost = _____

When a public utility company claims a property interest and 100% participation by the state, the utility company certifies that documentation of the property interest is on file and will be furnished to the state upon request or has a prescriptive right, Utility Property Interest.

Utility Signature _____ Title _____

TO BE COMPLETED BY MONTANA DEPARTMENT OF TRANSPORTATION

Checked _____ Title _____ Date _____

Approved _____ District Administrator Date _____

Approved _____ Supervisor Utilities Section Date _____

For Lump Sum Agreements final bill is to be submitted by District no later than *sixty (60) days* after completion of work.

I certify that the work represented by this agreement began _____
and was completed on _____

Signed _____ Title _____ Date _____

NOTE: The first sheet of this agreement is the final bill. Submit this sheet, one sketch of the relocated facilities and the CB7 along with a separate coding sheet to the Utility Section for payment.

Charge this bill to account # _____



Montana Department of Transportation Fast Process Agreement

The _____, hereinafter referred to as the "UTILITY," and the Montana Department of Transportation, hereinafter referred to as the "DEPARTMENT," hereby agree as follows:

1. That, due to the construction of this project or for safety considerations, adjustments of the existing UTILITY facilities will have to be made where the facilities now occupies the existing and/or proposed highway right-of-way. The utility will comply with the Code of Federal Regulations, Volume 23, Part 645 Subparts A and B, and subsequent amendments, Title 48 Code of Federal Regulations and also the laws of the State of Montana.
2. The DEPARTMENT'S obligation under this agreement shall be in accordance with all applicable State and Federal laws in existence on the date of execution of this agreement.
3. That UTILITY will make any necessary adjustments in its plant as required by the proposed construction or for safety considerations with its own forces, a continuing contractor, or by competitive bidding.
4. That if a contractor is used by a UTILITY the contract selection must awarded in accordance with practices followed by the UTILITY in the accomplishment of the UTILITY'S non- highway related work.
5. That this agreement is concluded on a Lump sum, Actual Cost or Unit Cost basis and in accordance with the Code of Federal Regulations, Volume 23, Part 645A and amendments thereto.
6. The DEPARTMENT reserves the right to terminate this agreement upon fifteen (15) days' written notice to the UTILITY. If the DEPARTMENT does terminate this agreement, it shall reimburse UTILITY for the DEPARTMENT'S share of all eligible costs the UTILITY has incurred under this agreement up to the date of the termination notice.
7. That all cost records of the UTILITY for this project will be subject to inspection at any time by representatives of the DEPARTMENT the legislative auditor and fiscal analyst and the Federal Highway Administration. All such records shall be retained for a period of not less than three years from the date of final payment.
8. No actual work is to be performed under this agreement until written authority to proceed is received from the respective District Administrator.
9. For Lump Sum Agreements the state's share of the Project cost will be submitted for payment by the Department within 60 days after completion of work. For Unit Cost or Actual Cost Agreements final payment will be made to the UTILITY within 60 days after receipt of a properly completed invoice, addressed to the STATE, or receipt of the supplies or services by the STATE, whichever is later.
 - a. Utility Work Orders will be initiated by the District when it has been determined the cost will exceed 15% of State's share of the agreement. Written justification will be supplied by the Utility Company or District.
10. Work done on highway right-of-way must be approved by the District Administrator to insure that installation of the facilities will meet the "Standard Specifications for Road and Bridge Construction" and administrative rules 18.7.201 through 18.7.241.
11. Addendum "A" is attached and by this reference made a part of this agreement if the UTILITY is relocating underground facilities within existing or proposed highway right-of-way, STATE OF MONTANA.

Approved MDT Legal Council and Civil Rights Bureau

Attachment

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

ADDENDUM "A"

BACKFILLING OF EXCAVATED AREAS BENEATH ROADWAY SECTION

Utility construction, which lies beneath the construction limits of the roadway, which requires backfilling of excavated areas, shall be subject to inspection by engineers of the State and shall meet the following specifications. The State's inspector shall designate on the ground the specific area where these requirements shall apply.

BACKFILLING

All backfilling shall meet the following requirements except when other methods are specified for certain types of installations.

Backfill material shall not contain sticks, sod, frozen soil or other unacceptable matter.

Backfill material shall be placed in layers of six-inch loose thickness or less. All backfill material shall be compacted.

MOISTURE AND DENSITY REQUIREMENTS

Each layer of material shall be compacted, with the proper use of water, until the in-place density of the material being compacted is not less than 95 percent of the maximum density established for the material being compacted or the material source or both. Water required shall be sufficient to obtain optimum moisture content plus or minus two percentage points, as determined by Montana Test Methods, unless modified by the engineer for conditions applicable to the character of the material being tested.

Material tests used to establish the maximum density values will be performed in accordance with Montana Test Method MT-210, or AASHTO-T-99. In-place density and moisture testing will be performed in accordance with applicable Montana Test Methods MT-212, MT-215, & MT-218. The percent compaction will be determined after making proper adjustments, when necessary, for oversize material.

Each layer of roadbed material that cannot be properly tested by Montana Test Methods, MT-212, MT-215, & MT-218, shall be compacted with compaction equipment in addition to compaction by hauling and spreading equipment. Compaction equipment for rocky material that cannot be tested shall normally be grid rollers, pneumatic-tired rollers, vibrating rollers, vibrating compactors, or self-propelled tamping rollers. Sheepsfoot rollers shall not be used unless specifically directed. Water shall be used where directed.

Costs to achieve the above requirements are included in the estimate of this agreement and also will be included in bids for work pertaining to this agreement. It is recognized that until actual construction takes place it will be impossible to determine those areas that will require work above and beyond that which could have been expected to achieve the above requirements. If such areas of extra work are determined during the actual construction, an "Order for Additional Work and/or Cost Increase" will be prepared by the State for Payment of the additional work so construction of the utility can take place accordingly.

BUY AMERICA

Products permanently incorporated into the work are subject to the Federal Buy America requirements as set forth in CFR 635.410. Buy America requirements apply to all steel or iron materials for permanent incorporation in the work. The steel or iron material must have all manufacturing process occur in the United States. "Manufacturing" includes all processes that affect the size, shape, and finish of the steel (coating, forming, plating, galvanizing, etc.). Buy America Certification must be provided to the State prior to commencement of work.