

**SUBRECIPIENT AGREEMENT
2018 BUILD AWARD – KALISPELL BYPASS
FOYS LAKE SECTION**

THIS AGREEMENT is made and entered into by and between the City of Kalispell, (“CITY” or “RECIPIENT”) (0219966650000) and the Montana Department of Transportation (“MDT” or “SUB-RECIPIENT”) (809791320).

WHEREAS, the CITY has applied for and received funds from the U.S. Department of Transportation, Better Utilizing Investments to Leverage Development (BUILD) Grants program pursuant to The Consolidated Appropriations Act, 2018 (Pub. L. 115-141, March 23, 2018), hereinafter called “BUILD Award”, to construct an additional section to the Kalispell Bypass, UPN 2038 (FAIN #TBD/Award Date December 2018/Award Duration through February 1, 2023/Award Amount \$12,750,000), titled Kalispell Bypass: Foys Lake Section (hereinafter the “Project”); and

WHEREAS, the BUILD Award amounts to \$12,750,000 with National Highway Performance Plan (NHPP) funds consisting of \$5,369,800 being matched by SUB-RECIPIENT at \$823,324 for a total cost of \$18,952,124 for the Project; and

WHEREAS, the Project will fund the construction of an interchange and 4-lane connection for a 1.9-mile section of US Highway 93 Bypass in the CITY; and

WHEREAS, the CITY wishes to engage SUB-RECIPIENT to assist in utilizing these funds;

Now, therefore, the parties agree as follows:

ARTICLE 1. PROJECT

Section 1.1 Purpose of Contract. This project is to construct an additional section to the Kalispell Bypass, UPN 1234 (FAIN #/Award Date/Award Duration/Award Amount), titled Kalispell Bypass: Foys Lake Section (the “Project”). See Attachment A for Scope of Work and Project Schedule.

Section 1.2 Scope of the Project. The SUB-RECIPIENT shall implement and utilize project funding as described in the Scope of Work, Attachment A. The SUB-RECIPIENT shall use its best efforts to efficiently and economically complete the Project.

Section 1.3 Project Description. The Project will fund the construction of an interchange and 4-lane connection for a 1.9-mile section of US Highway 93 Bypass in the CITY (see attachment A for full scope). SUB-RECIPIENT will design and award a contract to construct the Project. SUB-RECIPIENT will provide the CITY opportunities to participate in the Project’s Development (preliminary and final plan design), including invitation to the final inspection of the Project.

Section 1.4 Period of Performance. Project construction is anticipated in June 2020 with final project closeout anticipated May 1, 2024. This project shall be performed as per the Project Schedule, Attachment A.

Section 1.5 Costs of Project. The total funding for the project shall be the BUILD Award amount of \$12,750,000, National Highway Performance Plan (NHPP) funds consisting of \$5,369,800 being matched by SUB-RECIPIENT at \$823,324, for a total cost of \$18,952,124 for the Project (see attachment B). If during the term of this agreement, federal funds are reduced or eliminated, the RECIPIENT may immediately terminate or reduce the grant award upon written notice to the Project Director.

Section 1.6 Payment of the grant. Payment of the grant will be pursuant to and in accordance with 49 C.F.R. Parts 18 and 19, and the provisions of such regulations and procedures as the Government may prescribe. Final determination of the Grant’s expenditures may be based upon a final review of the total amount of the agreed project

costs and settlement will be made for adjustments to the Grant amount in accordance with applicable government wide cost principles under 2 C.F.R. 225 (State and Local Governments). If there are any differences between the requirements of 49 C.F.R. Parts 18 and 169 and Title 23 of the United States Code and Code of the Federal Regulations, the Title 23 requirements will take precedence. As noted within the terms of the grant agreement, the Federal Highway Administration (FHWA) will be administering the grant on behalf of the Department of Transportation (DOT).

Section 1.7 **Assurance and Certifications**. The CITY has submitted a requested for assistance, hereinafter referred to as the BUILD “Application,” including the assurances and certifications accompanying the Application, incorporated herein by reference and made a part hereof, and SUB-RECIPIENT agrees to abide by and comply with the assurances, certifications and other representations made in the Application relative to SUB-RECIPIENT’s role in administering the construction phase of the Project.

Section 1.8 **Administration of the Project**. SUB-RECIPIENT has demonstrated an ability to administer the construction of the Project, and has demonstrated the financial and technical feasibility of the Project, including the ability to start construction quickly upon receipt of the grant funding; to expend Grant funds once construction starts; and to receive all necessary environmental, federal, state and local planning, and other approvals that are the SUB-RECIPIENTs responsibilities for the project to proceed in accordance with the project schedule.

Section 1.9 **Monitoring**. SUB-RECIPIENT will be monitored periodically by the CITY, both programmatically and financially, to ensure that the Project goals, objectives, performance requirements, timelines, milestones completion, budgets and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Onsite monitoring visits will include authorization for the CITY Representative to enter the construction worksite as needed with advance notice and coordination with SUB-RECIPIENT.

Monitoring will involve the review and analysis of the financial, programmatic, performance and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed as outlined in OMB Circular A-133 and the OMB Circular A-133 Compliance Settlement. SUB-RECIPIENT is responsible for monitoring award activities, to include sub-awards, to provide reasonable assurance that the Federal award is administered in compliance with applicable requirements. Responsibilities include the accounting of receipts and expenditures, cash management, maintaining adequate financial records, and refunding disallowed expenditures.

Section 1.10 **FOIA**. The Parties are subject to the Freedom of Information Act (FOIA). SUB-RECIPIENT should, therefore, be aware that all applications and related materials submitted by applicants related to this Agreement will become agency records and, thus, are subject to FOIA and to public release through individual FOIA requests.

Section 1.11 **DBE**. SUB-RECIPIENT agrees to comply with 49 C.F.R. Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs – as a condition of receiving grant funds.

Section 1.12 **Inconsistency or conflict**. In the case of any inconsistency or conflict between the specific provisions of this Agreement and the Kalispell Bypass Foy's Lake Section Construction and Maintenance Agreement, such inconsistency or conflict shall be resolved as follows: First, by giving preference to the Kalispell Bypass Construction/Maintenance Agreement, second to the provisions and terms of this Agreement.

Section 1.13 **Indirect Costs**. 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 10.41% for fiscal year 2020 (July 1, 2019 to June 30, 2020). If the work occurs or extends into fiscal year 2021 or beyond the IDC rate will be charged at the rate agreed to by MDT and the Federal Highway Administration (FHWA).

Section 1.14 **Insurance**. 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.

- a. 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.
- b. 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.
- c. 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.

Section 1.15 **Reporting/Close-out/Reimbursement Requests**. SUB-RECIPIENT shall advise the CITY in writing of project progress at such times and in such manner as the CITY may require, as Attachment A, Reporting Requirements.

Section 1.16 **Conflict of Interest**. The SUB-RECIPIENT must disclose in writing any potential conflict of interest to the CITY in accordance with applicable Federal awarding agency policy, under 2 CFR §200.112.

Section 1.17 **Mandatory Disclosures**. The SUB-RECIPIENT must disclose, in a timely manner, in writing to the CITY all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in any of the remedies described in 2 CFR §200.338, including suspension or debarment, in accordance with 2 CFR §200. 113..

Section 1.18 **Internal Controls**. The SUB-RECIPIENT must establish and maintain effective internal controls over the award that provide reasonable assurance to the CITY that the SUB-RECIPIENT is managing the award in compliance with Federal statutes, regulations, and terms and conditions of the Federal award, in accordance with 2 CFR §200.303. SUB-RECIPIENT will provide administration and management of the contractor during project construction to ensure conformation with contract conditions, special provisions, technical specifications and compliance with contract timelines in accordance with Federal regulations.

Section 1.19 **Single Audit**. The SUB-RECIPIENT may be subject to the audit requirements of 2 CFR 200 Subpart F if the audit threshold in 2 CFR 200.501 of \$750,000 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.

ARTICLE 2. TERMS AND CONDITIONS

SECTION 2.1 **Default**. Nonperformance by the SUB-RECIPIENT of any obligation imposed by this Contract, including noncompliance with the federal assurances, or reduction of local project cost funding, will constitute default.

Section 2.2 **Termination**. This agreement may be terminated at any time based upon mutual written consent of the parties. If the agreement is so terminated prior to fulfillment of the terms stated herein, the SUB-RECIPIENT shall be reimbursed only for actual expenses, both direct and indirect, incurred to the date of termination.

Section 2.3 **Litigation**. In the event of litigation concerning this agreement, venue shall only be in the First Judicial District Court of the State of Montana, Lewis and Clark County.

Section 2.4 **Agreement Modification**. Any change in the agreement will only be by written agreement of the Parties.

Section 2.5 **Subcontracting**. SUB-RECIPIENT will not assign, sublet or transfer any part of this Agreement except by written subcontract, as part of the Project Contract. Nothing contained within this document shall create any contractual relationships between any sub-SUB-RECIPIENT and the CITY.

Section 2.6 **Indemnification**. 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.

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.

Section 2.7 **Notices**. Notices required by this Agreement should be addressed as follows:

As to the City of Kalispell:
Katharine King
Assistant Director
Community and Economic Development
City of Kalispell, Montana
(406) 758-7713
kking@kalispell.com

As to the Sub- Recipient:
Montana Department of Transportation
Deann Willcut,
Special Projects Accountant
P.O. Box 201001
Helena, MT 59620-1001

Section 2.8 **Compliance with Laws**. Some of the clauses contained in this agreement are not governed solely by Federal law but are significantly affected by State law. The laws and regulations cited in this agreement are not all-inclusive of those which may apply to the successful completion of this agreement. The SUB-RECIPIENT understands that it is its responsibility to learn which federal, state and local laws and regulations will apply to its operation under this agreement, and that SUB-RECIPIENT is solely responsible for its lawful compliance with all laws and regulations.

Section 2.9 **Access and Retention of Records.** SUB-RECIPIENT agrees to retain all documents relevant to the grant award in accordance with SUB-RECIPIENT's record retention policy of 8 years from the completion of the Project. SUB-RECIPIENT agrees to furnish the CITY, upon request, all documents and records pertaining to the determination of the Grant amount or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of SUB-RECIPIENT, in court or otherwise, involving the recovery of such Grant amount shall be approved in advance by the CITY.

Section 2.10 **Severability and Integration.** If any part, or parts, of this Contract are determined to be void, the remaining parts will remain valid and operative. This document, together with its schedules, attachments, and exhibits, represent the complete and entire understanding of the parties on its subject matter. No provision, express 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 contract unless it is reduced to writing, signed by the parties, and attached to this document.

Section 2.11 **Waivers.** A party's failure to enforce any provision of this Contract shall not be construed as a waiver excusing the other party's future performance.

ARTICLE 3. FEDERAL REQUIREMENTS

Section 3.1 **BUILD Grant requirements and contract clauses.** This Agreement shall also include the following Exhibits as integral parts hereof located at:

https://ops.fhwa.dot.gov/freight/infrastructure/build/fy2018_gr_exhbt/fy2018_gr_exhbt.pdf

Exhibit A	Legislative Authority
Exhibit B	General Terms and Conditions
Exhibit C	Applicable Federal Laws and Regulations
Exhibit D	Grant Assurances
Exhibit E	Responsibility and Authority of the Recipient
Exhibit F	Reimbursement of Project Costs
Exhibit G	Grant Requirements and Contract Clauses
Exhibit H	Quarterly Project Reports and Recertifications: Format and Content

Section 3.2 **NONDISCRIMINATION.** The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Nondiscrimination Authorities"). These include but are not limited to:

- **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.*), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686)** (prohibit 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);**
- **The Civil Rights Restoration Act of 1987, (Pub. L. 100-209), (broadens 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 (42 U.S.C. 12131-12189)** (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) and 49 CFR parts 37 and 38;
- **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations** (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); and
- **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency** (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR at 74087 to 74100)).

The SUB-RECIPIENT—

- Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted.
- Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non-Discrimination Authorities identified in this Assurance;
- Agrees to comply (and require any of its subrecipients, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;
- Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;
- Insert in all contracts and funding agreements with other State or private entities the following clause:

“During the performance of this contract/funding agreement, the contractor/funding recipient agrees—

- a. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;
- b. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in Appendix B of 49 CFR part 21 and herein;
- c. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;

- d. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and
- e. To insert this clause, including paragraphs a through e, in every subcontract and subagreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.

Section 3.3 **Political Activity (Hatch Act)**. The SUB-RECIPIENT 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.

Section 3.4 **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:

1. 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.
2. 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.
3. 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 grants, 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.

Section 3.5 **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.

Section 3.6 **Certification Regarding Debarment and Suspension**.

Instructions for Primary Tier Participant Certification (States)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a 144 certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.
4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause or default.

*Certification Regarding Debarment, Suspension, and Other Responsibility Matters-
Primary Tier Covered Transactions*

- (1) The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Participant Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion --
Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.


2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3.7 Buy America Act the SUB-RECIPIENT will comply with the Buy American requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase only steel iron and manufactured products produced in the United State with Federal funds, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonable available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal fund to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification to and approved by the Secretary of Transportation.

EXECUTION BY CITY OF KALISPELL, RECIPIENT

By signature below, the Recipient acknowledges that it accepts and agrees to be bound by this agreement.

Executed this 13th day of January, 2020.


Signature of City of Kalispell's Authorized Representative

Doug Russell
Name of Recipient's Authorized Representative

City Manager

EXECUTION BY MONTANA DEPARTMENT OF TRANSPORTATION, SUB-RECIPIENT

By signature below, the SUB-RECIPIENT acknowledges that it accepts and agrees to be bound by this agreement.

Executed this 18th day of February, 2020.


Signature of Montana Department of Transportation
Designated Official Representative

Michael Tooley
Designated Official Representative

Director of Transportation
Title



ATTACHMENT A

SCOPE OF WORK AND PROJECT SCHEDULE

A. Project Statement of Work

Summary:

The project will construct 1.9 miles of 4-lane highway for the Foys Lake Section of the Kalispell Bypass and the Foys Lake Interchange. This replaces the current two-lane configuration and the Foys Lake Roundabout. The new configuration will improve the facility's overall highway functions and improve its life-cycle cost by providing the appropriate design to handle traffic volume and operations and structural loading on the highway for its current conditions.

It also provides a 20-year design life to handle the expected level of traffic and the structural loading for the 4-lane Bypass section, the Foys Lake Road section accessing the Bypass, and the Foys Lake Overpass. While addressing the traffic congestion issue is an obvious concern and need, providing adequate structural integrity of the highway to handle the current and expected vehicle loading is important as well.

The Project will be completed in phases, as described below:

1. Right-of-Way - Construction is within existing SUB-RECIPIENT right-of-way. Impact on built and natural environment appears to be low per Environmental Impact Statement.
2. Construction Engineering – SUB-RECIPIENT will provide construction engineering services during the construction and project closeout. The selected engineering firm will also provide construction engineering support on an as-needed basis during construction

B. Estimated Project Schedule:

Completion of NEPA:	June 1, 2020
Start of Final Design:	March 1, 2020
Completion of Final Design:	August 1, 2022
Start of Right of Way Acquisition:	Complete
End of Right of Way Acquisition:	Complete
PS&E Approval	March 1, 2020
Construction Contract Award Date:	April 21, 2020
Construction Start Date:	September 1, 2020

REPORTING REQUIREMENTS

Subject to the Paperwork and Reduction Act, and consistent with the purposes of the BUILD Discretionary Grant Program, SUB-RECIPIENT agrees to collect and provide necessary data to the CITY to measure performance of the Project and to ensure accountability and transparency in Government spending. Information SUB-RECIPIENT can provide is as follows:

Contractor monthly schedule updates from the Engineering Project Manager

Monthly progress estimates detailing amounts paid to contractors

Construction Engineering Services Bureau projection inspection reports

FHWA project inspection reports

SUB-RECIPIENT Construction reports

- Daily Work Reports

- Diary Report

- Diary Charge Report

- Item Work Order

- Daily Work Template Report

Project meeting/public meeting updates

Change order report – including discussion of change orders and approval process

Annual amount reported on Schedule of Expenditures of Federal Awards (SEFA)

SUB-RECIPIENT will attend a quarterly status meeting with the CITY and other applicable agencies in attendance. The quarterly status meeting should discuss the project costs, schedules, quality issues, compliance with the Federal requirements, and other status items in enough detail to allow all involved parties to be fully aware of the significant status issues and the actions planned to mitigate any adverse impacts. In addition, significant issues occurring between status meetings must be communicated immediately without waiting for the next regularly scheduled meeting, with any highly significant or sensitive issues elevated immediately to the executive leadership.

Attachment B

Summary of Project's Estimated Budget. (See Attachment C for additional details).

BUILD Funds and Additional Sources of Project Funds:

BUILD Grant Amount:	\$12,750,000
Other Federal Funds ¹ (if any):	\$ 5,369,800
State Funds ² (if any):	\$ 832,234
Local Funds (if any):	\$ 0
Private Funds (if any):	\$ 0
<u>Other Funds (if any):</u>	<u>\$ 0</u>
Total Project Cost:	\$18,952,124

1 National Highway Performance Program (NHPP) Funds

2 Highway State Special Revenue Account[IDENTIFY STATE FUND SOURCE]

ATTACHMENT C

Measure	Description and Category of Measure	Measurement Period	Reporting Period
<p>Average Daily Traffic Counts in the City of Kalispell along the US 93 ALT Route and Foys Lake Road</p> <p>MDT</p>	<p>The measure will track the reduction in traffic congestion that occurs from intermodal improvements.</p>	<p>Baseline Measurement: 13,118 AADT</p> <p>Annual average, accurate as of the Pre-project Measurement Date</p> <p>Interim Performance Measures:</p> <p>Accurate as of</p> <p>8-1-2023</p> <p>8-1-2024</p> <p>8-1-2025</p>	<p>10-1-2023</p> <p>10-1-2024</p> <p>10-1-2025</p>
<p>Annual Auto Crash Rates by type and Severity along the US 93 ALT Route and Foys Lake Road</p> <p>MDT</p>	<p>Highway Measure: Crash rates will be measured and reported as crashes per 100 million VMT and identified by the following severity categories: fatal, injury, and property damage only (PDO) crashes.</p>	<p>Baseline Measurement:</p> <p>Fatal Crash Rate:0.000</p> <p>Injury Crash Rate:0.132</p> <p>PDO Crash Rate:0.895</p> <p>Annual average, accurate as of the Pre-project Measurement Date</p>	<p>10-1-2023</p> <p>10-1-2024</p> <p>10-1-2025</p>

		Interim Performance Measures: Accurate as of 8-1-2023 8-1-2024 8-1-2025	
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