

STATE OF MONTANA
Department of Transportation

MAINTENANCE AGREEMENT

Project Name	Dollar General Sidewalk
Project Address	998-900 West Holly St
MDT Maintained Route (Route)	MT-16
Reference Post	37.5
Project Developer/Encroachment Applicant	Capital Growth Buchalter
Name of City or Municipality (City)	City of Sidney
Address of City or Municipality	115 2 nd Steet S.E., Sidney, MT 59270
Current IDC Rate for Fiscal Year	Year: 2023 10.71%
Current year MDT Nondiscrimination and Disability Accommodation Notice	Revised (Month/Year): 01/2022 Attachment A

This Agreement by and between the City of Sidney (City), and the Montana Department of Transportation (MDT, Department, or State), establishes the responsibilities and duties of the parties in respect to project activities on a portion of MT-200 (Route) located within Sidney, Montana.

The Purpose of this Agreement is to set forth the respective responsibilities and duties of the Parties associated with the installation and maintenance of the Project Specific Features within the above referenced MDT right-of-way, a commission-designated highway system, per the approved plans (Attachment B) received from the Developer. This Agreement sets forth terms regarding the City’s maintenance responsibilities for the Project that the City must meet for MDT to provide the Developer the necessary Encroachment Permit to install the Project Specific Features. Any Encroachment Permit granted to the Developer by this Agreement is explicitly subject and subordinate to the rights and title of MDT and the State of Montana and the attached General Terms and Conditions.

Project Features

Select the checkbox next to every feature listed below that your project includes and that you intend to address in the current agreement. Standard language is provided in the template for these features. (See Article III Project Specific Features)

- 1. Landscaping and/or Irrigation
- 2. Sidewalks*
- 3. Sidewalk Benches/Bike Racks/Other Sidewalk Amenities*
- 4. Shared-Use Path*
- 5. Bulb-outs*
- 6. Lighting

*Submit preliminary plans to MDT external ADA coordinator in Helena for compliance review.

Is the project located within one of the following MS4 areas? No Yes

- Billings/Portion of Yellowstone Co.
- Great Falls/Portion of Cascade Co.
- Billings
- Butte
- Kalispell
- Missoula/Portion of Missoula Co.
- Bozeman
- Helena

Projects located in a Small Municipal Separate Storm Sewer System (MS4) Permit area subject to the following conditions.

1. MDT concludes, and the City agrees, the project work is designed in compliance with applicable Small MS4 Permit requirements.
2. The City agrees to operate, monitor and maintain storm water management features in compliance with applicable MS4 requirements.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative effective as of the date of final signature.

Have the Following General Terms and Conditions of this agreement been modified?

Yes No

MDT	City
X Dated:	X Dated:
District Administrator	City Representative

Copy: MDT Office of Civil Rights (DocuSign Notification)

ARTICLE I. GENERAL OBLIGATIONS OF MDT

1. If the City does not fulfill their maintenance requirements as 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 60 days to complete any such maintenance. If MDT performs such maintenance under this section, it must provide detailed invoices of such costs to the City.
2. MDT may complete any maintenance required due to 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.

ARTICLE II. GENERAL OBLIGATIONS OF THE CITY

1. The City agrees that no fixture, building, structure, or other permanent installation will be constructed or placed within commission designated right-of-way without prior written approval from MDT.
2. The City agrees any maintenance within MDT right-of-way that requires lane closure or equipment must be reviewed and approved by MDT maintenance staff prior to initiation of the maintenance.
3. The City shall complete the necessary environmental processes for modification to the state highways and roadways and demonstrate that all, if any, environmental issues associated with the proposed project have been identified and mitigated. The City agrees it will prepare and file any required environmental documents and apply for and obtain any permits required by other governmental agencies at no expense to MDT prior to maintenance taking place within commission designated right-of-way.
4. The City agrees to be responsible for any and all damages to facilities within commission designated right-of-way caused by the City, the City's staff or contractors, or resulting from the City's operations. The City must repair any and all damages, at its sole expense, after notification of damage by MDT and approval of repair work needed, method of repair, and schedule for repair.
5. If the City fails to perform or cause to be performed, the maintenance obligations as required by this agreement within 60 days of written notification from MDT, MDT may complete the required maintenance and the City shall be required to compensate MDT for its performance of said maintenance.
6. MDT may complete any maintenance required due to a public emergency without prior notice to the City. The City agrees to be responsible for and to reimburse MDT for said maintenance, including Indirect Costs.

ARTICLE III – PROJECT SPECIFIC FEATURES

1. Landscaping/Irrigation Equipment
 - a. Upon completion of the Project, the City agrees that it is responsible, at no cost to MDT, to service, maintain and repair the landscaping and irrigation equipment installed as part of this project.
 - b. For the purposes of this Agreement, "maintenance of landscaping and irrigation system," is defined as: mowing, watering, debris removal, weed control, fertilizing, tree/shrub trimming including removal, replacement and maintenance of sight triangles, the repair and replacement of fences, and maintenance of all features in compliance with ADA/PROWAG. The irrigation system shall be fully operational, free of leaks, with heads selected and adjusted to reduce water waste.

- c. If the City is not able to complete the maintenance on the landscaping and irrigation system as per this Agreement, the improvements may become the property of MDT, without reimbursement. If landscaping or irrigation become MDT property, MDT will maintain the property as it sees fit and may remove the landscaping and irrigation system without City approval. MDT may seek compensation for the maintenance or removal of the landscaping and irrigation system from the City.
2. Sidewalks/Curb
 - a. Upon completion of the Project, the City agrees that it is responsible, at no cost to MDT, to service, maintain, repair, and pay the cost of operating the sidewalk/curb within the project limits, such that it does not negatively impact the operation of the sidewalk or the safety of the traveling public. If all or part of the Project becomes unsafe for use, the City agrees to restrict access to the affected area until the condition has been remedied.
 - b. For the purposes of this Agreement, "maintenance of a sidewalk" is defined as: grinding or milling down displacements; surface patching; crack sealing; sweeping; cleaning; washing; replacing portions of damaged sidewalk; removal of snow and ice; repair of chipped, fractured, or broken surface from any cause, including but not limited to frost heaving, landscaping, tree roots, or encroachments; removal of debris and other obstructions or impediments to safe pedestrian travel; and any and all other normally accepted maintenance practices.
3. Sidewalk Benches/Bike Racks/Other Sidewalk Amenities
 - a. Upon completion of the project, the City agrees that it is responsible, at no cost to MDT, to service, maintain and repair the benches, bike racks, planters, tree grates, and other sidewalk amenities installed as part of this project.
 - b. For the purposes of this Agreement, "maintenance of benches, bike racks, planters, tree grates, and other sidewalk amenities," is defined as: regular inspection to ensure the safety and functionality of the amenity, and that the hardware is intact, fasteners are made flush with surfaces, and seats and backings are smooth with no protrusions or sharp edges. The placement must allow for a clear approach area adjacent to the furnishing and meet pedestrian access route requirements consistent with ADA (PROWAG) requirements.
4. Shared-Use Path
 - a. Upon completion of the project, the City agrees that it is responsible, at no cost to MDT, to service, maintain, repair, and pay the cost of operating the path within the project limits, such that it does not negatively impact the operation of the path or the safety of the traveling public. If all or part of the shared use path becomes unsafe for use, the City agrees to restrict access to the affected area until the condition has been remedied.
 - b. For the purposes of this Agreement, "maintenance of a shared-use path" is defined as: grinding or milling down displacements; surface patching; crack sealing; sweeping; cleaning; washing; replacing portions of damaged path; removal of snow and ice; repair of chipped, fractured, or broken surface from any cause, including but not limited to frost heaving, landscaping, tree roots, or encroachments; removal of debris and other obstructions or impediments to the safe travel of pedestrians or other path users; maintenance of all associated drainage features; maintenance of path-related signs; and any and all other normally accepted maintenance practices.
 - c. For the purposes of this Agreement, "maintenance of shared-use path signs," is defined as: the inspection, cleaning, repair and replacement of signs damaged through weathering, vandalism, wind, and other means.
5. Bulb-outs
 - a. Upon completion of the project, the City agrees that it is responsible, at no cost to MDT, to maintain the bulb-out installed as part of this project and the improvements placed within it (e.g. sidewalks/paths, landscaping, irrigation, and/or other amenities).
 - b. For the purposes of this Agreement, "maintenance of a sidewalk or path" is defined as: grinding or milling down surface displacements; surface patching; crack sealing; sweeping; cleaning; washing; replacing portions of damaged path or sidewalk; removal of snow and ice; repair of chipped, fractured, or broken surface from any cause, including but not limited to frost heaving, landscaping,

- tree roots, or encroachments; removal of debris and other obstructions or impediments to safe pedestrian travel; and any and all other normally accepted maintenance practices.
- c. For the purposes of this Agreement, "maintenance of landscaping and irrigation system," is defined as: mowing, watering, debris removal, weed control, fertilizing, tree/shrub trimming including removal and replacement, and the repair and replacement of fences. The irrigation system shall be maintained such that it is fully operational, free of leaks, with heads selected and adjusted to reduce water waste.
 - d. For the purposes of this Agreement, "maintenance of other amenities," is defined as: regular inspection to ensure that the safety and functionality of the amenity and that the hardware is intact, fasteners are flush with surfaces, and seats and backings are smooth with no protrusions or sharp edges. The placement must allow for a clear approach area adjacent to the amenity and meet pedestrian access route requirements consistent with ADA (PROWAG) requirements.
6. Lighting
- a. Upon completion of the project, the City agrees that it is responsible, at no cost to MDT, to service, maintain, repair and pay the costs of operating (including utility costs) the decorative and/or pedestrian lighting installed as part of this project.
 - b. For the purposes of this Agreement, "maintenance of street lighting", is defined as: the inspection of the lighting system for operation, cleaning lamps, lenses and reflectors, stocking of replacement parts, bulb replacement, and repairs to and replacement of damaged fixtures.
 - c. Any major repair costs for lighting damage not recoverable from third parties shall be the responsibility of the City.
 - d. If the cost of energy is raised by the utility company, the City, town or special improvement district shall pay their proportionate share of the rate increase.

ARTICLE IV – 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 has violated or breached any term, condition or article of this Agreement and the City has failed to correct the same within 60 days of receiving notice in writing addressed to the City at the addresses shown above, from MDT 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 Project as it sees fit and may remove it without City approval. MDT may seek compensation for maintenance or removal of the Project from the City.
3. **Hold Harmless & 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.

4. 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.

5. Public Safety

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, and make reasonable and timely effort to correct or repair the hazard.

6. Invoicing and Indirect Cost (IDC)

If MDT incurs any costs as a result of a public emergency that necessitates action on MDT's part concerning the maintenance or repair of the Project back to its original state, MDT shall 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.

Section 17-1-106, MCA, 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. If the work occurs or extends beyond the current fiscal year the IDC rate will be charged at the rate agreed to by MDT and the Federal Highway Administration (FHWA).

7. 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 on Indemnification. 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.

8. 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.

9. 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.

10. 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.
11. ADA - MDT requires that any construction or maintenance resulting from this Agreement must include appropriate pedestrian facilities that meet or exceed current MDT standards for accessibility as set forth by the United States Department of Justice 2010 ADA Standards for Accessible Design, United States Access Board Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way (2011 PROWAG), and MDT’s Detailed Drawings, 608 series.
12. Audit – The Legislative Auditor and the Legislative Fiscal Analyst may, without prior notice and during normal business hours, audit, at their own cost and expense, all records, reports, and other documents the City maintain in connection with this Agreement.
13. 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 this MOA (Mont. Code Ann. §18-1-118). The City agrees to create and retain records supporting this Agreement for a period of three years after the completion date of this Agreement or the conclusion of any claim, litigation or exception relating to the Agreement taken by the State of Montana or a third party.
14. Highway Modifications – If MDT modifies or improves the highway or roadway facilities, the City will modify, upon reasonable notice at no expense to MDT, the Project accordingly.
15. Revocation – This Agreement is revocable by MDT in the event that the Project facilities within the right-of-way cease to be used by the City for a period of one year or abandoned otherwise. Upon revocation or abandonment, the system facilities must be removed in compliance with this Agreement.
16. Utilities – The right of any private or public utility now lawfully occupying the right-of-way to operate and maintain utility facilities supersedes any right granted by this Agreement to the City. Copies of existing utility permits may be obtained from the MDT District Utility Agent.
17. Amendment and Modification – The Parties may modify or amend this Agreement only by a 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 provision of any Addendum, the provision of the Addendum shall control, unless the provisions thereof are prohibited by law.
18. 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.
19. 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.

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ATTACHMENT A

MDT Nondiscrimination and Disability Accommodation Notice

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ATTACHMENT B

Plan