

PROJECT SPECIFIC AGREEMENT  
BETWEEN MISSOULA COUNTY AND THE MONTANA DEPARTMENT OF TRANSPORTATION  
FOR THE PRELIMINARY ENGINEERING OF  
BITTERROOT RIVER-W OF MISSOULA  
BR 9032(65) UPN 6296

This memorandum of understanding (MOU) by and between Missoula County (County), and the Montana Department of Transportation (MDT) establishes the roles, responsibilities and commitments of the parties relative to the cost, administration, design, and maintenance of the BITTERROOT RIVER-W OF MISSOULA project (PROJECT):

WHEREAS, The PROJECT described as: BITTERROOT RIVER-W OF MISSOULA, is to provide a new bridge and roadway connections over the Bitterroot River near the existing Maclay Bridge; and

WHEREAS, Missoula County has been certified under MDT's Local Agency Guidelines to perform Preliminary Engineering phase management for the Project and is responsible for payback of state and federal funds expended on the Project if required, and compliance with (1) Title 23 US Code, Highways, (2) the regulations issued pursuant thereof, (3) Office of Management and Budget Circulars A-102, A-87, and A-133, (4) the policies and procedures promulgated by the MDT; and

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the parties agree as follows:

1. PROJECT DESCRIPTION

The Project will provide the preliminary engineering services needed in advance of constructing a bridge and bridge approaches over the Bitterroot River between South Avenue West and River Pines Road. The concept is a two lane structure with bicycle and pedestrian facilities.

2. PROJECT DEVELOPMENT

Project development includes: consultant management, administration, public involvement, engineering analysis, surveying, design, plan preparation, environmental documentation, and permitting in preparation to let and to construct the Project. The County is responsible for assuring compliance with and coordination through the federally mandated Missoula

Area Transportation Planning Process in accordance with 23 USC Section 134/135 which includes but is not limited to consistency with the Metropolitan Planning Organization and State Long Range Plans, and incorporation of the project and project phases in the respective Metropolitan and Statewide Transportation Improvement Programs.

### 3. COUNTY RESPONSIBILITIES

#### a. Project Development

The County agrees to develop and prepare all of the necessary design plans, specifications, estimates, and contract documents for the Project in accordance with MDT's Local Agency Guidelines.

#### b. Environmental Requirements

The County will provide the documentation necessary to comply with applicable environmental requirements including the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (NHPA) and Section 4(f) of the DOT Act.

#### c. Utilities

The County will certify utility moves have been completed prior to MDT requesting Federal authorization of the construction phase of the project.

#### d. Right-of-way

The County shall identify any additional right-of-way necessary to construct and maintain the project.

#### e. Public Involvement

County agrees to provide for public participation in the project's development. The public involvement process will include:

- Consultant contract provisions to specifically address public involvement with Project stakeholders and to receive public input.
- Public Involvement on functional elements and the aesthetics to be incorporated into the Project design will be initiated prior to any design.
- A final report detailing the outcomes of the public involvement process.

f. Indemnification

The County agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, liabilities and causes of action of any kind or character, including the cost of defense thereof, on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the County and/or its agents, employees, representatives, assigns, contractors, or subcontractors under this agreement except for the sole negligence, joint negligence, or contributory negligence of the State or its employees.

g. Compliance with laws

The County shall, at all times during the performance of its obligations of this Contract strictly adhere to all applicable local, state and federal laws and regulations, including but not limited to: Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1972, the Education Amendments of 1972, the Age Discrimination Act of 1975, the Americans With Disabilities Act, including Title II, Subtitle A, 24 U.S.C. Sec. 12101, et seq., all rules and regulations applicable to these laws prohibiting discrimination based upon actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, gender identity or expression and handicap and with Exhibit A, attached hereto and incorporated by reference.

4. AGREEMENT

- a. Modification and Amendment. This Agreement may be modified or amended, in writing, by the mutual consent of the parties.
- b. Termination. Both the State and the County agree to move in an efficient and expeditious manner towards development of the proposed project. Either party may terminate this agreement and all obligations hereunder, with 30-day notice in writing to the other party of the intention to do so. If the County terminates project development at any time, it will reimburse the State for any and all costs incurred by the state up to the date of stoppage.

5. CONSULTANT SELECTION

The consultant will be selected in accordance with MDT's Local Agency Guidelines, Using Consultants, Chapter 13. The final selection of the consultant will be approved by both the County and MDT.

6. TECHNICAL DESIGN REQUIREMENTS

All design will be in accordance with MDT's Project Development Procedures and Design Manuals and, where applicable, current MDT, County and AASHTO urban standards.

7. FUNDING

- a. This Project is eligible for Federal Bridge Program (BR) funds. The County has requested BR funds in the amount of \$451,082. The required non-federal match participation will be 13.42% for use of these federal funds. This is the total Federal funding available for the preliminary engineering phase of the Project. Therefore, the funding for the PE phase of the Project is as follows:

<u>Funding Available</u>	
BR funds	\$451,082
<u>Non-federal Match</u>	<u>\$ 69,918</u>
Total Funds Available	<b>\$521,000</b>

- b. The MDT is responsible for the non-federal matching funds and indirect costs. Indirect costs are in addition to the Total Funds Available shown above.
- c. The County is responsible for 100% of non-federal aid eligible costs and payback of state and federal funds expended on the Project if required.

8. MAINTENANCE

The County will be responsible for the maintenance and operation of the completed project.

9. LIAISON/CONTACTS

In order to effectively administer this Contract, each party shall appoint contact persons. The Contact Persons for MDT is: Terry Voeller, P.E., CTEP/TA Project Engineer. The Contact Persons for the County is: Erik Dickson, P.E., County Engineer. Replacement of the individuals named herein may be accomplished by written notice to the other party.

10. VENUE

This Contract is governed by the laws of Montana. The parties agree that any mediation, arbitration or litigation concerning this Agreement must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana.

11. ACCESS AND RETENTION OF RECORDS

- a. The County agrees to provide MDT or its authorized agents, including but not limited to the Montana Legislative Auditor, access to any records concerning this Agreement.
- b. The County agrees to create and retain records supporting this Agreement for a period of three years after the completion date of this Agreement or the conclusion of any claim, litigation or exception relating to this Agreement taken by the State of Montana or a third party.

12. METHOD OF PAYMENT

The County will submit a claim for cost reimbursement quarterly detailing items and quantities of acceptable work completed that period to the CTEP/TA Office for the project development costs incurred. The request will be accompanied by documentation substantiating the amount requested and identifying the applicable federal share. Twenty five percent (25%) of the monies due the County will be retained by MDT until final completion and acceptance of the project's development by MDT.

13. SEVERABILITY AND INTEGRATION

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

IN WITNESS WHEREOF, the Director of Transportation's authorized representative has signed on behalf of MDT, and the Chairperson of Missoula County Board of Commissioners, on behalf of the County, has signed and affixed hereto the seal of the County.

**STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION**

By \_\_\_\_\_ Date: \_\_\_\_\_, 2014

Director of the Montana Department of Transportation

**MISSOULA COUNTY**

ATTEST

Local Agency Official

By \_\_\_\_\_

By \_\_\_\_\_

Clerk and Recorder

Jean Curtis, Commission Chairperson

Date: \_\_\_\_\_, 2014

**APPROVED FOR LEGAL CONTENT**

By \_\_\_\_\_

MDT Legal Counsel

**EXHIBIT A**  
**NON-DISCRIMINATION NOTICE**

During the performance of this Agreement, the County (hereafter in this Section "the Party"), for itself, its assignees and successors in interest, agrees as follows:

**A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS**

- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
  - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
  - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The

Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance; Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

**B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, SEC. 49-3-207, MCA**

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

**C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

- (1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **"The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party."**
- (3) All video recordings produced and created under contract and/or agreement will be closed-captioned.

**D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26**

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

**The Party, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Party 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**