

CITY – STATE AGREEMENT
RUSSELL STREET – MISSOULA, STPU-M 8105(8), UPN 4128
PROJECT DEVELOPMENT AGREEMENT

January 18, 2012

THIS AGREEMENT is made and entered into by and between the State of Montana, acting by and through its Department of Transportation, hereinafter called “MDT” or “State”, and The City of Missoula, hereinafter called “City”, according to the following terms and conditions.

WITNESSETH THAT:

WHEREAS, a formal project development agreement was entered into on February 7, 2000 between MDT and the City for Russell Street – Missoula project; and

WHEREAS, under provision 14 of the original February 7, 2000 project development agreement, the City has requested to terminate the original agreement and enter into a new project development agreement; and

WHEREAS, MDT is willing to accept responsibility for the future project development and construction of the project; and

WHEREAS, MDT and the City propose to reconstruct a portion of Russell Street (U-8105) in Missoula between Mount Ave. (RP 1.511) and West Broadway Street (RP 3.022) as well as all side street connections, other roadwork, trail crossings, and all other project features as discussed for the Russell Street – Selected Alternative in conformance with the Record of Decision for the Russell Street / South 3rd Street – Missoula Final Environmental Impact Statement (“Project”); and

WHEREAS, the parties to this Agreement acknowledge that it is in the best interests of the people of the State of Montana to reconstruct said portion of Russell Street; and

WHEREAS, MDT is responsible for the Federal-aid Highway Program and will participate in the development and construction of said Project provided the Local Agency agrees to the conditions set forth herein; and

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, it is mutually agreed as follows:

1. PROJECT DESCRIPTION

The Project encompasses the reconstruction of Russell Street in Missoula between Mount Avenue and West Broadway Street in conformance with the Russell Street/South 3rd Street – Missoula Final Environmental Impact Statement, the Record of Decision, and where applicable, to current MDT, City and AASHTO urban standards. The proposed scope of work of the construction project includes grading, drainage, gravel, pavement, a new bridge, curb and gutter, public transit facilities, sidewalks, bicycle facilities, trail crossings, pavement markings, signing, lighting, signalization, landscaping, intersection improvements and other miscellaneous features. New right-of-way will need to be acquired, and utilities will need to be relocated.

2. PROJECT DEVELOPMENT

Project development includes: consultant management, administration, public involvement, engineering analysis, surveying, design, plan preparation, environmental documentation, permitting, right-of-way acquisition, and utility relocation in preparation to let and to construct the Project.

3. CITY RESPONSIBILITIES

a. Project Sponsorship

The City agrees to act as a project sponsor for the Project. The City will support MDT during project development. The City will participate in the Technical Design Committee and Decision Team described in section 11. The City will issue local permits for applicable construction activities.

b. Utilities

The City agrees to examine its long-range plans for sanitary sewer condition and needs. Prior to plan completion, it further agrees to identify sewer service needs to all areas that will, at any time in the foreseeable future, be serviced from beneath the project.

The City agrees to inventory and advise MDT of the condition of all sewer lines. Prior to or during project construction, the City agrees to replace sanitary sewer facilities that are located under the proposed project that are in such a condition that they may require replacement within twenty years after the estimated completion date of the proposed project. The City agrees to ensure that City construction work within the project limits is completed prior to the letting of the project, or that provisions are made to coordinate the City construction with the MDT project. The City agrees to pay MDT for all City-owned facilities installed by the MDT contractor during construction of the project, unless the facilities are in conflict with the project construction. For facilities that must be moved because of conflicts with the proposed project, MDT will prepare a utility agreement and will pay its proportional share of the cost as required by state law.

c. Public Involvement

City agrees to partner with MDT on the public involvement process as described in section 5.

d. Indemnification

The City 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, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of the City's employees or third parties 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 City and/or its agents, employees, representatives, assigns, or subcontractors under this agreement except for the sole negligence, joint negligence, or contributory negligence of the State.

e. Compliance with laws

The City 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. MDT RESPONSIBILITIES

a. Project Development and Construction

MDT agrees to accept responsibility for the development and construction for the Project. MDT will be responsible for all aspects of project development as described in Section 2. MDT will prepare and administer all consultant contracts in accordance with MDT's Consultant Services Manual. MDT will develop the project in accordance with MDT's Project Development Procedures and Design Manuals. MDT will participate in the Technical Design Committee and Decision Team described in section 11. MDT has the responsibility and authority to proceed with all aspects of project development and construction after approval of work elements as described in section 11.

b. Bids and Contract Administration

Once all approvals, right-of-way acquisition, clearances and permits are obtained, MDT will advertise, bid, award and administer the construction contract in accordance with MDT procedures including obtaining concurrence in the award from FHWA and requesting the award of the contract from the Transportation Commission.

MDT will not let the project to contract without the City's concurrence if the bid price exceeds the available funds or exceeds the engineer's estimate by more than 10%.

Additionally, MDT will obtain the City's concurrence before approving change orders over \$100,000 or for any amount that would negatively impact a designated City fund balance.

c. Public Involvement

MDT agrees to partner with the City on the public involvement process as described in section 5.

d. Indemnification

MDT agrees to protect, defend, and save the City, 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, and causes of action of any kind or character,

including the cost of defense thereof, arising in favor of MDT's employees or third parties 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 MDT and/or its agents, employees, representatives, assigns, or subcontractors under this agreement except for the sole negligence, joint negligence, or contributory negligence of the City.

e. Utilities

The MDT will inform the utility companies responsible for water, power, gas, phone, etc., of the future plans for the area and encourage the utility companies to make provisions for any utility additions, adjustments, or replacement anticipated within 20 years after the estimated completion of the Project. For facilities that must be moved because of conflicts with the proposed Project, MDT will prepare a utility agreement and will pay its proportional share of the cost as required by state law.

f. Compliance with laws

MDT shall, at all times during the performance of its obligations of this Contract strictly adhere to all applicable state and federal laws and regulations.

5. PUBLIC INVOLVEMENT

The City and MDT agree to partner for the public involvement process.

The public involvement process will include:

- a. Consultant contract provisions to specifically address public involvement with Russell Street project stakeholders and public input. The process will be determined during scoping with the consultant.
- b. Identification of stakeholders, including but not limited to a representative cross-section of all facility user groups, residents and business owners in the Russell Street project corridor and adjacent neighborhoods.
- c. Public Involvement on functional elements and aesthetics will be initiated prior to any design beyond the environmental document.
- d. Multiple venues for public input, including at least two public forums and smaller group meetings with stakeholder groups on a regular basis.
- e. A final report from the Consultant detailing the outcomes of the public process.

6. AGREEMENT

- a. Modification and Amendment. This agreement may be modified or amended, in writing, by the mutual agreement of the parties involved up until award of the contracts for the associated roadway project. The funding commitments cannot be changed without Transportation Commission approval.
- b. Termination. Either party may terminate this agreement and all obligations hereunder, with 90-day notice in writing to the other party, prior to the award of any contracts for construction of the Project. This agreement may not be terminated once contract or contracts have been awarded for construction of the Project.

7. CONSULTANT SELECTION

The consultant will be selected in accordance with MDT's Consultant Services Manual (2010), Consultant Selection Chapter 6 following the Project-Specific Process. The Consultant Rating Panel will include one City Council representative and one Mayor's representative, two MDT representatives and one FHWA representative. The City will have one vote on the Consultant Selection Board. The final selection of the consultant will be approved by both the City and MDT at the Consultant Selection Board meeting.

8. TECHNICAL DESIGN REQUIREMENTS

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

9. FUNDING

- a. Through the Missoula area metropolitan transportation planning process, Russell Street has been prioritized as the number one priority for federal and state funds provided through the Surface Transportation Program – Urban (STPU) funding program. Additional federal, state, and local funding prioritized through the metropolitan transportation planning process includes Congestions Mitigation and Air Quality (CMAQ) funding, Bridge (BR) funding, Enhancement (STPE) funding and local funds. Also, a congressionally directed earmark was provided for this project through the Safe, Accountable, Flexible, Efficient Transportation Equity Act – a Legacy for Users. The City will continue to seek funding and prioritize Surface Transportation Program – Urban funds to ensure funding of the project. MDT will provide the federal-aid portion and

federally required match for STPU, BR and CMAQ (Growth) funds. MDT will provide the federal-aid portion of STPE, while the City is responsible for the federally required match on STPE funds and any betterments above standards or any improvements not federal-aid eligible.

- b. MDT will incur costs associated with project development described in Section 1 and will be funded with sources described in section 8.a.
- c. Indirect Costs. Section 17-1-106, MCA requires any state agency, including MDT, which receives non-general funds to identify and recover its indirect costs. These costs are in addition to direct project costs. MDT's indirect cost rate is determined annually as a percentage of the project's direct costs to cover the project's share of MDT's indirect costs as defined by OMB Circular A-87.

10. MAINTENANCE

MDT is currently responsible for the maintenance of Russell Street from West Broadway Street to the south end of the Clark Fork River Bridge, and from South 2nd Street to Mount Avenue. The City is responsible for the maintenance from the south end of the Clark Fork River Bridge to South 2nd Street. The parties respective responsibilities will remain in place at the present time. MDT may continue to contract with the City for its maintenance responsibilities.

Maintenance responsibilities for Russell Street may change as a result of this project. If that occurs, a separate Maintenance agreement between MDT and the City will be developed later in the project development.

11. TECHNICAL DESIGN COMMITTEE AND DECISION TEAM

- a. MDT and the City will establish a Technical Design Committee (TDC). The TDC will consist of one permanent voting member each from MDT and the U.S. Department of Transportation/Federal Highway Administration (FHWA) and two representatives from the City, consisting of one City Council representative and one Mayor's representative. The TDC may include as necessary additional MDT, City, FHWA and consultant staff with technical and project expertise to discuss project related issues for consideration of the permanent TDC members. The TDC's purpose is to provide direction regarding design for the Russell Street project to facilitate the production by MDT and the project consultant of technical plans and specifications for construction of the project. The TDC

will consider context sensitive design to the greatest extent practicable. The TDC will meet on a monthly basis, unless there are no agenda items and will render decisions by consensus. In the event that the TDC cannot reach consensus on a design issue, then within ten days of impasse the TDC representatives will report the issue to her/his respective agency's decision-maker with authority over the issue and the agency representative on the Decision Team.

- b. MDT and the City will establish a Decision Team (DT). The DT will consist of one permanent member each from MDT, the City and FHWA. The DT representatives will be the MDT Director, City Mayor and FHWA Division Administrator or a representative assigned on their behalf. When an issue is elevated from the TDC to the DT, the DT will arrange to meet as soon as reasonably possible to review the issue and seek resolution by majority vote.

12. LIAISON/CONTACTS

In order to effectively administer this Contract, each party shall appoint contact persons.

The Contact Persons for MDT is: Missoula District Administrator

The Contact Persons for the City is: R. Steven King, P.E., Public Works Director

Replacement of the individuals named herein may be accomplished by written notice to the other party.

13. 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.

14. ACCESS TO RECORDS

The City agrees to provide MDT or its authorized agents, including but not limited to the Montana Legislative Auditor, access to any records concerning this Agreement.

15. TERMINATION OF PRIOR AGREEMENT

Upon execution of this agreement by both parties, the original agreement for the above project dated February 7, 2000 is terminated.

IN WITNESS WHEREOF, the Director of Transportation's authorized representative has signed on behalf of MDT, and the Mayor of the City of Missoula, on behalf of the City of Missoula, has signed and affixed here to the seal of the City.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

By _____, 2011

Director of the Montana Department of Transportation

CITY OF MISSOULA

ATTEST

Local Agency Official

By _____

City Clerk

City Mayor

_____, 2011

APPROVED FOR LEGAL CONTENT

By _____

MDT Legal Counsel

Missoula – City Attorney

EXHIBIT "A"

NON-DISCRIMINATION NOTICE

During the performance of this Agreement, the Local Authorities (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