



Meeting Notes

Subject: South Avenue Bridge Document Review

Date: 10/27/2017

Location: Missoula County Courthouse Annex, Room 151

Attendees:	Dave Strohmaier (Msla Co)	Heidy Bruner (FHWA)
	Susan Kilcrease (MDT)	Dustin Hirose (HDR)
	Erik Dickson (Missoula County)	Jon Schick (HDR)
	Brian Hasselbach (FHWA)	Dan Harmon (HDR)
		Others (see sign-in sheet)

** Note: The meeting minutes previously published to the project website on 11/16/2017 had not been reviewed by the participating agencies. **The following meeting minutes have been revised based on clarifications from FHWA and MDT.***

Introductions

- Dan Harmon led introductions at the discussion table.

Meeting Purpose

- The purpose of the meeting is to discuss review comments on the draft Categorical Exclusion environmental document. The meeting will allow Missoula County and their consultant an opportunity to provide an update on the status of the NEPA/MEPA document and its development, obtain clarification on review comments from MDT and FHWA, and establish next steps to completing the environmental document. Following the meeting, Missoula County will then address the comments and prepare a comment response table for MDT and FHWA to review.

Environmental Document format and content

- Draft Environmental document was submitted to MDT for review in January 2017; HDR received comments in August 2017.
- Draft narrative format, standard for some projects. MDT is moving toward a standard Categorical Exclusion (CE) form. Jon discussed how the existing narrative will be re-formatted to meet MDT's new standard form.
- Narrative is 50+ pages, CE is currently 8 pages.
- Q: Do we take what was in the narrative and reference it, or does it need to be copied into the new CE form?
 - FHWA: Key piece is to make sure we have enough information clearly written to explain the project and give FHWA enough information to

- determine whether there is a significant impact or not; FHWA does not have an opinion on the format and would defer to MDT.
- MDT: Hybrid? Letter format introducing project (fits written description), then do form? FHWA was agreeable to that idea.
 - HDR: Repurpose narrative into a supporting technical memorandum. Analysis would be included in the narrative. Form would serve as the signature document and reference the supporting technical memorandum.
 - Q (Msla Co): Does a project like this deserve an elevated environmental document?
 - FHWA: Based on review comments, there are still questions that need to be answered to ascertain significance. Whether it's a CE or EA, the analysis process is the same. Based on what we know today, a CE seems appropriate. At this time, FHWA plans to continue with a CE. If significant impacts are identified a different course of action could be chosen.
 - Q (MDT): Where will the bulk of the analysis be provided? A lot of information is in the table, one comment received was to include that in the narrative and use the table for the analysis of significance.
 - HDR: Path of least resistance is continuing with the narrative, but the form can be used to address necessary NEPA topics and the one-stop location for impacts, but the information is largely provided in the narrative (as a reference document).
 - Msla Co: Continue using the narrative, as that's what the comments have been based on, and there is no official requirement that the CE form be used.
 - FHWA: It's MDT call on whether to use the CE form and how to best tell the story of the project. There is flexibility in how this analysis is packaged. Form development intention was to standardize and provide consistency regarding how CE's are conducted; FHWA knew there would be exceptions for projects including those that were already underway (like SAB). The CE form's usage is less important than the analysis being complete.
 - MDT: Some subjects are included in the narrative that are not included in the CE form.
 - Susan will discuss with Environmental Services Bureau and let HDR know if a different determination is made.

Section 4(f) Evaluation

- Analysis of Feasible Alternatives
 - Is there an option for preservation in place (i.e. not demolishing the Maclay Bridge after the SAB is constructed)? If the bridge isn't removed, 4(f) isn't an issue. If removal of the bridge is proposed, enough information must be provided to show that there is no other "feasible" and "prudent" alternative.
 - What would be the adequate level of analysis to demonstrate we have considered the rehabilitation option(s)?

- A lot of the work was already conducted in the planning study, though it didn't fully address a new bridge and keeping the existing bridge (i.e. having 2 bridges in place).
- For 4(f), use information from the planning study. Also, a variety of comments have been received by FHWA, so documentation needs to address those comments.
- What are Msla Co's intentions? That decision would inform the 4(f) and 106 process.
 - Dave S (Msla Co) would like to see a robust evaluation of rehabilitation options.
 - Msla Co Public Works has considered an independent third party review of previous evaluations regarding costs, liability of maintenance, possibility of adoption, floodplain impacts, etc. MDT and Msla Co need to determine which agency will pay for this.
 - MDT: Agrees that the rehabilitation option needs to be analyzed.
 - HDR: Maclay Bridge Alliance's review did not provide an analysis on bridge approaches; need to make sure the analysis goes beyond the actual bridge so that a comprehensive analysis is completed.
 - FHWA: Make the discussion more robust regarding why rehabilitation isn't a viable option; pull information from the Planning Study. Were any new alternatives suggested by the public that were not addressed in the Planning Study?
 - Msla Co: Rehabilitation option didn't pass the Needs and Objectives criteria of the Planning Study, even after the criteria was adjusted.
 - HDR: The Planning Study was a high level study, may need a more thorough engineering analysis to discuss impacts, such as bridge approaches; some options require additional right-of-way.
- Other 4(f) documentation: The de minimis letter will be revised per FHWA comments.

Section 106 Process

- Assessment of rehabilitation alternatives:
 - Q (HDR): Where is the threshold when rehabbing a bridge where modifications become so extensive they affect the bridge's historic status? Is that a conversation with Jon Axline?
 - FHWA: Yes, discuss this with SHPO to determine if rehabilitation options would alter the bridge so much that it would no longer be eligible for historic preservation designation.

- You can modify the structure, but there's a tipping point where modifications are so vast that it is no longer an avoidance alternative and becomes an adverse effect (i.e., you've changed the characteristic of the bridge so much that it is no longer considered eligible for the National Register).
- Historic Bridge Programmatic and Adopt-a-Bridge process and timing. Is there a time in particular, later in the project, once closer to final design and construction; nothing in agreement precludes reaching out earlier. Would it be advantageous to reach out earlier? Agreement is through SHPO and MDT.
- Dave S. – From a PI standpoint, Dave has concerns that the project would appear to be going down a pre-determined path that bridge removal and adoption have already been decided.
- MDT: It's appropriate to reach out to Jon Axline regarding the process, but it's premature to pursue the notification and Adopt-a-Bridge process. Need to be patient with our process.
- FHWA: There are pieces of information that are critical regarding how analysis unfolds. If one or more rehab options have an adverse effect, these need to be addressed. More analysis is needed to make a determination. If the Maclay Bridge stays in place, the action will not result in an adverse effect under Section 106 and will not trigger further analysis and consideration under Section 4(f).

Endangered Species Act Consultation

- ESA clearance: Should we move forward with a biological opinion on the project prior to completing the NEPA document?
 - FHWA: The USFWS (Mike McGrath) has requested a field survey for yellow-billed cuckoo; need to move forward with that survey to determine impacts.
 - HDR: Who conducts this survey? Strict training is required to do protocol surveys; HDR has someone trained to do it. USFWS will determine who will conduct it. Must be conducted during migratory window (spring/summer). Process needs to be conducted and better documented in Environmental Document.
- Bull Trout Special Provisions: Msla Co acknowledges there will be timing requirements and special provisions requires to accommodate bull trout.
 - MDT: Keep MDT's wildlife biologist (Joe Weigand) in the loop.

Public Comments

- Need to pool resources to make sure all comments have been received; what is our plan for developing public record?
- Dave S. Will there be formal response to comments?
- Concept is acknowledged and considered. Would a master spreadsheet be the best approach? FHWA would like that. FHWA sends their correspondence to MDT and its MDT's responsibility to share those.

Other Items

- Comment regarding not moving forward with previous EA. CE needs to explain the document and why it didn't move forward to a FONSI or other decision document. Need to clarify that this was not a loose end.
- Link the Planning Document and make it clear how that is being relied upon for decision making.

Next Steps:

- Determine revised project schedule; post update on the website.
- One more public informational meeting is planned to occur following completion and approval of the environmental document. The date for this meeting is dependent on when the e-doc is approved.
- What are Missoula County's decision points? Signatory on decision document with FHWA and MDT?
 - FHWA: Msla Co can be a signatory, but they are not the NEPA or MEPA decision-maker; lead federal agency is the responsible party for NEPA; lead state agency is the responsible party for MEPA. It's not uncommon to extend the courtesy for partners to be signatories on the document as well.
- Dave S. Q: If one agency takes exception with the decision and chooses not to sign, how much would Missoula County be responsible for financially if they decide not to move forward with the project?
 - FHWA Clarification: It's a misnomer that an EIS or EA results in a stepped-up analysis, it's the same analysis for a CE as it is for an EA or EIS. The process for analyzing the impacts to environmental considerations is the same—identify resources, project impacts, and determine significance of those impacts. An EA or EIS may have a different format and different public involvement requirements, but the environmental impacts must be assessed and the public must be informed regardless of whether the environmental document is classified as a CE, EA, or EIS.
 - FHWA on Pay Back: it would depend on the change in course of action. Hypothetically, if we progress through NEPA document and a different decision is made, and new information supports a no-build decision, there may be enough justification to not require pay back. If it is just a matter that Missoula County changes their mind, it could be a different story. The decision depends on what the rationale and reasoning is for changing course.
 - FHWA on signature and difference of opinion: depends on what the difference of opinion is. It's partly the County's call on how they want to proceed, but FHWA has their own obligations and cannot support a course of action that violates their requirements (e.g., violating Section 4(f)), etc.
 - FHWA on signatory: Formal action by the County Commission is not required, Msla Co just needs to tell FHWA they'd like to be a signatory.

- FHWA: It's the County's call who they delegate as the signatory (whether commissioner, public works director, project engineer, etc.). County needs to identify a single signatory (typically the Commission Chair), FHWA does not make that determination.
- MPO review of STIP or TIP: General requirement that FHWA must verify that the project is fiscally constrained; do that by ensuring the next phase is funded in the TIP. This was a general comment by FHWA, not a statement that it's not. Erik thought that the project is in the TIP to include the PE phase only. The next phase would be Right-of-Way, which would need to be included.
- The subject of the South Avenue Bridge Project 2015 resolution by the Missoula County Commissioners (Resolution No. 2015-046) was discussed following the meeting. FHWA was not aware of the resolution and project specific agreement between Missoula County and MDT, specifically how it relates to the County's responsibility for repayment of project funds should the project be terminated. HDR agreed to provide them as attachments to the meeting minutes. See the June 24, 2014 Project Specific Agreement, Item 4.b. regarding project termination.

**Missoula County South Avenue Bridge Project
Agency Meeting: Sign-In/ Contact List
October 27, 2017**

Name, Affiliation	Office Phone #	Mobile #	E-mail
Dan Harmon, HDR	(406) 532-2214	(406) 370-9758	dan.harmon@hdrinc.com
Roger Austin	406-240-9882		roger.a@pci-montana.com
Oliver Kapp-Daniels	406-728-4268		olappedaniels@gmail.com
Don Stevenson	406-543-8989		donvicki79@gmail.com
Shira Houck	406-728-1884		
Sharon Sterbis	406-544-0478		mtstersbur@gmail.com
Bob Schweitzer	406-544-9066		outlaw43@hotmail.com
Jim Kales	396-8155		
CHRIS RILEY	406-441-3913		CHRIS.W.RILEY@DOT.GOV
Gregory H. Robertson	406-258-4818		grobertson@missoulacounty.us
Jamie Erbacher	406-258-4653		jerbacher@missoulacounty.us
FRED STEWART	542-9017		FRED@GORENBERKHOR
Godd Kliez	258-4841		fkliez@missoulacounty.us
Terri Voeller	444-9457		tvoeller@mt.gov
IAN ST. PETER	728-3282		IAN@STPMAOFFICE.COM
ANDY KUPVALIS	549-6089		
Michael Burpach	543-7548		

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RESOLUTION NO. 2015 - 046

**AFFIRM MISSOULA COUNTY'S COMMITMENT
TO THE SOUTH AVENUE BRIDGE PROJECT**

WHEREAS, Missoula County has identified the need to replace Maclay Bridge as far back as the 1980's and included it as a project in each version of the Missoula Urban Transportation Plan since; and

WHEREAS, Missoula County Surveyor nominated Maclay Bridge for replacement as part of the Montana Department of Transportation's Off System Bridge Program in 2002; and

WHEREAS, two independent planning studies have been completed that have confirmed the need to replace Maclay Bridge and identified the location of a new bridge at South Avenue; and

WHEREAS, the Montana Department of Transportation has previously notified Missoula County of its 2002 replacement nomination of funding availability; and

WHEREAS, the Maclay Bridge Planning Study final report dated March 22, 2013, prepared by Robert Peccia and Associates recommends Option 3 E.1, the South 1 Alignment; and

WHEREAS, on April 18, 2013, the Missoula County Board of County Commissioners voted unanimously to pursue federal funding for the replacement of the Maclay Bridge river crossing through the Off-System Bridge Program at the South 1 Alignment; and

WHEREAS, Missoula County has been certified by the Montana Department of Transportation through the Local Agency Guideline Manual (LAG Manual) process to develop and manage projects involving federal aid; and

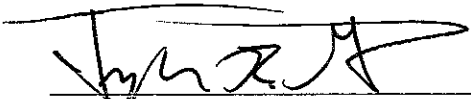
WHEREAS, Missoula County has entered into a Project Specific Agreement to develop and manage replacement of Maclay Bridge with a new structure at South Avenue;

NOW, THEREFORE, BE IT RESOLVED that Missoula County reaffirms its commitment to development and management of the South Avenue Bridge Project and wishes to continue its partnership with the Montana Department of Transportation to deliver a high quality well managed project through its completion.

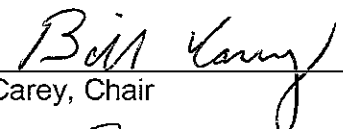
DATED THIS 22ND DAY OF APRIL, 2015

**BOARD OF COUNTY COMMISSIONERS
MISSOULA COUNTY, MONTANA**

ATTEST:



Clerk & Recorder



Bill Carey, Chair



Nicole Rowley, Commissioner



Jean Curtiss, Commissioner

June 24, 2014

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 non-federal match requirements, 100% of non-federal aid eligible costs, and 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>Local Match</u>	<u>\$ 69,918</u>
Total Funds Available	\$521,000

- b. The County is responsible for non-federal match (local match) requirements, 100% of non-federal aid eligible costs and payback of state and federal funds expended on the Project if required.
- c. 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 2 CFR Part 225 (formerly OMB Circular A-87) MDT's current indirect cost rate is 9.13% for fiscal year 2015 (July 1, 2014 to June 30, 2015).

For this project, MDT billing to the County will include a charge for the indirect costs associated with the local matching share at the current fiscal year indirect cost rate,

June 24, 2014

which amount will be applied toward the total project contribution of the County. If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the project.

The County will submit payment to the State within thirty (30) days of billing. Payments to this project will be provided to the State in the form of a check to be credited to this project. The payment(s) should be sent to MDT's Administrative Division at:

Montana Department of Transportation
Attention: Collections
2701 Prospect Avenue
P.O. Box 201001
Helena, MT 59620-1001

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.

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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 _____

By _____

MDT Legal Counsel

Missoula County Attorney

**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

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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

PROJECT SPECIFIC AGREEMENT MODIFICATION

The parties entered into the attached Project Specific Agreement in 2014 that provided for, among other things, the preliminary engineering services needed in advance of constructing a bridge and approaches over the Bitterroot River between South Avenue West and River Pines Road. Missoula County has requested changes to the project's budget and retainage requirements.

The budget is increased to reflect the amounts shown in the Consultants Services Agreement between the County and HDR Engineering, Inc., plus an additional 10% to allow force account work to be performed by the County. The 25% retainage requirement has been deleted from the Agreement.

Accordingly, the parties agree to modify that Agreement as set forth below.

After NOW, THEREFORE, ...

Sections 7 and 12 will be modified to read:

7. FUNDING

- a. The County has requested federal BR funds and non-federal matching funds in the amount of \$1,416,417.65. The required non-federal match participation will be 13.42%. This is the total funding available for the preliminary engineering phase of the Project. Therefore, the funding for the PE phase of the Project is as follows:

BR funds	\$ 1,226,334.40
<u>Non-federal matching funds</u>	<u>\$ 190,083.25</u>
Total funds available	\$ 1,416,417.65

- b. The MDT is responsible for the non-federal matching funds and indirect costs. Indirect costs are in addition to the funds available shown above.

It is understood and agreed between the parties that: Section 17-1-106. MCA requires any state agency, including MDT that 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 projects share of MDT's indirect costs as defined by 2 CFR Part 200, Appendix VII. MDT's current indirect cost rate is 10.37% for fiscal year 2016 (July 1, 2015 to June 30, 2016). If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the project.

- 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.

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.

All other terms of the original agreement will remain in full force.

IN WITNESS WHEREOF, the Department's authorized representative has signed on behalf of MDT, and the Chairperson of the 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 *Will Wooley* Date June 5, 2015
Director of the Montana Department of Transportation

APPROVED FOR LEGAL CONTENT

Chris Beards
MDT Legal Counsel

MISSOULA COUNTY

By *Bill Carney* Date 5/27, 2015
Missoula County Commission Chairperson

ATTEST:

By *[Signature]*
Clerk & Recorder

