

County Construction and Maintenance Agreement

HSIP STW-0(072)
SF 249 BILLINGS DISTRICT SIGNS

This Agreement by and between Yellowstone County (Local Agency), and the Montana Department of Transportation (MDT), establishes the responsibilities and duties of the Parties with respect to the Project. The Project includes signing and painting. The Project is located on the Routes listed below:

Roadway and Structure Information Table

Route Number	Corridor Number	Local Street Name	Beginning Ref Post	Ending Ref Post	Roadway Maintenance Authority	Improvement
L-56-124	C056124	Fly Creek Rd	1.760	3.510	County	Consider installing chevrons and CLRS through the curve.
L-56-271	C056271	Pryor Creek Rd	0.00	6.23	County	Consider installing speed advisory plaques on the existing curve warning signs and chevrons.
L-56-304	C056304	River Rd	5.800	6.600	County	Install chevrons
L-56-742 L-56-740	C224934 C224933	Hoskins Rd & McGill Rd	0.975	0.987	County	Consider installing double oversized stop ahead signs, double oversized stop signs, reflective strips on posts and pavement markings.
P-264A / L-56-700	C056788 C056700	Old Hwy 312/ Shepard Rd	7+0.680 11+0.448		MDT County	Oversize Stop Sign, Cross Traffic Does Not Stop Sign, Retro-Reflective Sheeting - Red (4"x72") and additional painting. (On MDT RW) Oversize Stop Ahead Signings (on County RW)
N-4 / L-56-304	C000004 C056304	US-212/US-310 THIEL RD	54.13 0.00		MDT County	Oversize Stop Sign, Cross Traffic Does Not Stop Sign, Retro-Reflective Sheeting - Red (4"x72") and (On MDT RW) Oversize Stop Ahead Signings (on County RW)

Whereas, the road upon which the Project is located is a public road not on any commission-designated highway system, and the Local Agency is the maintaining authority of the roadway.

ARTICLE I. GENERAL OBLIGATIONS OF MDT (Local Agency Maintained Roadway)

1. MDT will design and award a contract to construct the Project.
2. MDT will provide the Local Agency opportunities to participate in the Project's development, including invitation to the final inspection of the Project.
3. MDT agrees to develop, administer, design and construct the Project, which is eligible for federal funding and approved through the established fund program prioritization processes (including, but not limited to STPU, Urban Pavement Preservation, Highway Safety Improvement Program, and Congestion Mitigation & Air Quality Improvement funds) in coordination with the County. MDT agrees to ensure that the Project is consistent with and in compliance with:
 - a. applicable adopted local planning documents, where feasible and not in conflict with MDT Design Standards and Specifications, including but not limited to the adopted growth policy, design standards, and ADA Transition Plan;
 - b. applicable MDT Design Standards and Specifications, or with Montana Public Works Standards as modified by the City, whichever the parties agree is most appropriate for the specific item within the project as determined through project development;
 - c. the Manual on Uniform Traffic Control Devices (MUTCD); and
 - d. sound engineering practices.
4. MDT may complete any roadway or Right-of-Way Feature maintenance required due to a public emergency and seek compensation from the Local Agency for any costs incurred. In doing so, MDT may first provide notice to the Local Agency, 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 Local Agency.

ARTICLE II. GENERAL OBLIGATIONS OF THE LOCAL AGENCY

1. The Local Agency will maintain the roadway including but not limited to: pavement repair, pavement preservation, bridges, and snowplowing, and all roadway features, including but not limited to: signals, roadway signage, guardrails and non-decorative/standard/safety roadway lighting, storm drains, (if present) unless otherwise noted herein.
2. The Local Agency will maintain all Right-of-Way Features
3. If the Local Agency does not fulfill its roadway or Right-of-Way Feature maintenance requirements as stated in this Agreement, MDT may complete the required roadway or Right-of-Way feature maintenance and seek compensation from the Local Agency. In doing so, MDT must first provide notice to the Local Agency allowing time to complete any such maintenance. If MDT performs such maintenance under this section, it must provide detailed invoices of such costs to the Local Agency.
4. The Local Agency is responsible for issuing all future encroachment and approach permits and ensuring the resulting actions do not interfere with roadway or pedestrian travel or decrease safety.
5. The Local Agency agrees to conform in all regards to Mont. Code Ann. Title 61, Chapter 8, and will not take any action, by enacting an ordinance or otherwise, in contradiction of the traffic laws in Mont. Code Ann. Title 61, Chapter 8.

6. The Local Agency will provide appropriate and timely input during the Project's development.
7. The Local Agency will continue to enforce the ordinances, laws and/or regulations necessary and essential for the operations of the Project.
8. The Local Agency, at its sole expense, must obtain and maintain all federal, state and local building permits or other permits of any type or nature required by a governing authority, except as noted in this Agreement.
9. The Local Agency agrees to regulate utility occupancy on the right-of-way of this roadway in conformance with occupancy regulations that comply with or are more restrictive than the requirements of the Administrative Rule of Montana, 18.7.201 through 18.7.241, governing "Right of Way Occupancy by Utilities."
10. The Local Agency agrees it will assume full and complete responsibility for the Project upon notification by MDT of the Project's Substantial Completion. The Local Agency's acceptance of the substantially completed Project includes accepting any right-of-way or easements acquired for the Project that are acquired in the name of the Local Agency and ownership and responsibility for any permits obtained for the Project.

ARTICLE III. PROJECT-SPECIFIC FEATURES

11. Signage

- a. Upon completion of the Project by MDT and its Contractor, the Local Agency agrees that it is responsible, at no cost to MDT, to maintain the signs within the Project.

For the purposes of this Agreement, "maintenance of signs," is defined as: the inspection, cleaning, repair, and replacement of signs damaged through weathering, vandalism, impacts or other incidents damaging the signs.

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.

Termination – This Agreement may be terminated by either party if the other party violates or breaches any term, condition, or article of this Agreement and the breaching party has failed to correct (or reasonably initiate correction) within 60 days of receiving notice in writing addressed to the breaching party's representative, of such violation or breach of any term, condition, or article of this Agreement.

2. Other Agreements – Other Agreements pertaining to the project area remain in full force and effect. In the case of a conflict between this Agreement and a previously executed Agreement, the terms of this Agreement apply.

3. Hold Harmless & Indemnification –

- a. The Local Agency 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 Local Agency'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 Local Agency, its agents, or sub-contractors, under this Agreement, except the negligence of MDT.
- b. The State and MDT agrees to protect, defend, indemnify, and hold the Local Agency, 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 Local Agency.

4. Insurance –

- a. General Requirements: Each Party shall maintain for the duration of this Agreement, at its own cost and expense, insurance, a self-funded plan, or risk-pooling agreement covering claims for personal or bodily injury, death, or damage to property that may arise from or in connection with the performance of duties and obligations in this Agreement by each Party, its agents, employees, representatives, assigns, or sub-contractors. This coverage shall cover such claims as may be caused by any negligent act or omission.
- b. General Liability : Each Party shall purchase and maintain coverage with single and combined single limits for bodily injury, personal injury, and property damage at or exceeding the requirements of Mont. Code Ann. § 2-9-108 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 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 Montana Code Annotated Title 2, Chapter 9.
- c. Workers' Compensation Insurance: Local Agency 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 Montana Code Annotated §§ 39-71-401 and 39-71-405. Proof of compliance must be in the form of worker's compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the Local Agency nor its contractor, subcontractors, and employees are employees of MDT. This insurance/exemption must be valid for the entire Agreement period.
- d. General Provisions: All 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 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.

5. Public Safety – It is agreed, if any repairs to the elements of the Project must be performed to address or prevent a public hazard, the Local Agency will immediately protect the area from public access, contact the appropriate MDT Area Maintenance Office, and make reasonable and timely effort to correct or repair the hazard.
6. Invoicing and Indirect Cost (IDC) – If MDT incurs any costs resulting from this Agreement, MDT shall be entitled to be compensated for such costs by the Local Agency and the Local Agency shall pay the same within thirty (30) days of its receipt of such invoices.

MCA §17-1-106, requires all state agencies, including MDT, which receive non-general funds to identify and recover indirect costs (IDC) in addition to direct project costs. MDT's IDC rate is recalculated annually, as defined in 2 CFR Part 200, Appendix VII in consultation with the FHWA. The IDC rate in effect for the fiscal year MDT incurs the costs will be charged to Local Agency in addition to the direct project costs.

i. Invoices will be sent to:

Yellowstone County Courthouse
Attn: Public Works Director
217 North 27th Street
Billings, MT 59101

ii. Payments shall be made to:

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

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.
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 Local Agency will require that during the performance of any work arising out of this Agreement the Local Agency, 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 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 Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way, and MDT's Detailed Drawings, 608 series.

12. Audit – The Local Agency grants to the Legislative Auditor and the Legislative Fiscal Analysts the right, without prior notice and during normal business hours, to audit, at their own costs and expense, all records, reports, and other documents, the Local Agency maintains in connection with this Agreement.
13. Utilities – This Agreement is subject to the right of any private or public utility entity now lawfully occupying the right-of-way to continue to operate and maintain utility facilities thereupon. Copies of existing utility permits may be obtained from the MDT District Utility Agent.
14. Amendment and Modification – This Agreement may be modified or amended only by written Amendment signed by the Parties. In addition to the terms and conditions contained herein, the provisions of any Amendment 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 provisions of any Amendment, the provision of the Amendment shall control, unless the provisions thereof are prohibited by law.
15. Access and Retention of Records – The Local Agency agrees to provide MDT, the State of Montana Legislative Auditor, or their authorized agents access to any records necessary to determine compliance with the Agreement. The Local Agency agrees to create and retain records supporting this Agreement for a period of three (3) years after the completion date of the Agreement or the conclusion of any claim, litigation or exception relating to the State of Montana or a third party.
16. Severability – In the event that any one or more of the provisions of this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
17. Representatives
 - a. Local Agency's Representative: The Local Agency's Representative for this Agreement shall be the Local Agency Manager or designee or such other individual as Local Agency shall designate in writing. Whenever approval or authorization from or communication or submission to Local Agency is required by this Agreement, such communication or submission shall be directed to the Local Agency's Representative and approvals or authorizations shall be issued only by such Representative; provided, however, that in exigent circumstances when Local Agency's Representative is not available, MDT may direct its communication or submission to other designated Local Agency personnel or agents.
 - b. MDT's Representative: The MDT Representative for this Agreement shall be the District Administrator or Area 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, Local Agency may direct its direction or communication or submission to other designated MDT personnel or agents.
18. 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.

IN WITNESS WHEREOF, MDT's authorized representative has hereunto signed on behalf of the State of Montana, and the Local Agency's authorized representative on behalf of the Local Agency, has signed and affixed hereto the seal of the Local Agency.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

By _____ Date _____
Montana Department of Transportation

Approved for Legal Content

Approved for Civil Rights

COUNTY OF YELLOWSTONE

The above resolution was adopted by the Board of Local Agency Commissioners this ____ day of ____, 20__.

By _____ Date _____
CHAIRMAN, BOARD OF [COUNTY or CITY-COUNTY
COMMISSIONERS

CLERK AND RECORDER

(COUNTY SEAL)

[COUNTY, or CITY-COUNTY] MONTANA

ATTACHMENT A: MDT NONDISCRIMINATION
AND DISABILITY ACCOMMODATION NOTICE

MDT NONDISCRIMINATION AND DISABILITY ACCOMMODATION NOTICE

Montana Department of Transportation ("MDT") is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter "protected classes") by its employees or anyone with whom MDT does business:

Federal protected classes

Race, color, religion, national origin, sex, age, disability, and genetic information.

State protected classes

Race; color; national origin; familial or marital status; pregnancy, childbirth, or medical conditions related to pregnancy or childbirth; creed; social origin or condition; genetic information; sex, sexual orientation, gender identification or expression; ancestry; age; mental or physical disability; political or religious affiliations or ideas; military service or veteran status; vaccination status or possession of immunity passport.

For the duration of this contract/agreement, the PARTY agrees as follows:

(1) Compliance with Regulations: The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Non-discrimination:

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
 - ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).

- iii. Contact information for PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
- iv. Information on how to request information in alternative accessible formats.
- c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.

(3) Participation by Disadvantaged Business Enterprises (DBEs):

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY must comply with applicable federal and state laws regarding the DBEs, including but not limited to 49 CFR Part 26.
- b. By signing this agreement the PARTY assures that:
The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor 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.
- c. PARTY must include the above assurance in each contract/agreement the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment:

In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(6) Sanctions for Noncompliance: In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it

or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

(7) Pertinent Non-Discrimination Authorities:

During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Federal

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601 *et seq.*), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Sections 162 and 301(g) of the Federal-Aid Highway Act of 1973, (Public Law No. 93-87, 87 Stat. 250, codified at 23 U.S.C. § 324), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Section 520 of the Airport and Airways Improvement Act of 1982, (49 U.S.C. § 47123), (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (Public Law No. 100-259), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, (42 U.S.C. §§ 12131 through 12189), which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and

certain testing entities as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

State

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

(8) Incorporation of Provisions: The PARTY will include the provisions of paragraphs one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives cited therein. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.