

RESOLUTION NO. R24-60

A RESOLUTION OF THE CITY COUNCIL APPROVING A COMMITMENT OF FUNDING FOR THE COMPLETION OF THE WEST RAILROAD STREET PROJECT.

BE IT RESOLVED by the City Council of the City of Laurel, Montana,

Section 1: Approval. The Montana Department of Transportation Memorandum regarding estimated costs of completion for the West Railroad Street Project (hereinafter “the MDT Memorandum”), a copy attached hereto and incorporated herein, is hereby approved.

Section 2: Execution. The Mayor is hereby given authority to execute the MDT Memorandum on behalf of the City.

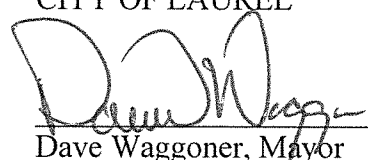
Section 3: City Obligations. The City hereby agrees that it will commit to a funding addition up to and including the amount of \$2,737,319.00 for the completion of this project. The City further understands and agrees that payment is not required until an estimated sixty days before bid letting.

Introduced at a regular meeting of the City Council on the 13th day of August, 2024, by Council Member Mackay.

PASSED and APPROVED by the City Council of the City of Laurel the 13th day of August, 2024.

APPROVED by the Mayor the 13th day of August, 2024.



CITY OF LAUREL


Dave Waggoner, Mayor

ATTEST:



Kelly Strecker, Clerk-Treasurer

APPROVED AS TO FORM:

A handwritten signature in black ink, reading "Michele L B", with a long horizontal flourish extending to the right.

Michele L. Braukmann, Civil City Attorney

AMENDMENT 1
UPN 10121 WEST RAILROAD STREET – LAUREL
MEMORANDUM OF AGREEMENT
BETWEEN
THE MONTANA DEPARTMENT OF TRANSPORTATION
AND
CITY OF LAUREL

The City of Laurel (CITY) and the Montana Department of Transportation (MDT) do hereby agree and acknowledge that the WEST RAILROAD STREET, LAUREL UPN 10121000 Memorandum of Agreement (MOA) entered January 2, 2023, is amended as follows:

The purpose of this amendment is to update information to reflect the current scope of work and associated cost estimates for reconstruction of WEST RAILROAD STREET, LAUREL UPN 10121000 (PROJECT) and increase the CITY funding contribution required to complete the PROJECT.

PARAGRAPH 2 IS AMENDED TO READ:

This PROJECT is in the city of Laurel on West Railroad Street (U-6902) from the junction with 1st Avenue (N-4) to the junction with 8th Avenue (L-56-419A). The scope of work includes reconstruction work on West Railroad Street from the intersection of 1st Avenue to 8th Avenue. This includes one travel lane in each direction, curb, gutter, sidewalks, ADA installations, storm drain installation, and utility relocations to the existing roadway.

5th RECITAL AND FOOTNOTE 1 ARE AMENDED TO READ:

WHEREAS, the current estimated cost for all phases of the PROJECT is approximately \$10,441,000¹ including indirect costs (IDC) and inflation.

FN 1 Cost estimate includes all phases, inflation, and IDC.

SECTION III C (1) IS AMENDED TO READ:

1. Agree and understand 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 200 Appendix VII. MDT's current IDC rate is 11.32% for fiscal year 2025 (July 1, 2024, to June 30, 2025).

For this PROJECT, MDT billings to the CITY will include a charge for the indirect costs at the current fiscal year indirect cost rate. This amount will be applied toward the total PROJECT contribution of the CITY, 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.

SECTION III C (3) AND FOOTNOTE 2 ARE AMENDED TO READ:

3. Agree current PROJECT cost estimate for all phases is \$10,441,000, this includes IDC, contingency, and inflation to FFY27. The CITY is responsible for all project costs in excess of available STPU funds.

Available funding from PROJECT funding sources include:

STPU funds FFY 2027 ² :	\$	5,203,681
Local Funding:	\$	<u>5,237,319</u>
	\$	10,441,000

FN 2 Estimated Annual Allocations are subject to MDT Transportation Commission Approval. Funding projections are based on the best available information and are subject to change given funding uncertainties and unknown impacts of future congressional or other federal and state actions. Surface Transportation Program Urban (STPU) funds available are dependent on the delivery year of the PROJECT.

SECTION IX (7) IS AMENDED TO READ:

7. Invoicing and Indirect Cost (IDC)

- a. If MDT incurs any costs resulting from this Agreement, MDT shall be entitled to be compensated for such costs by the CITY and the CITY shall pay the same within thirty (30) days of its receipt of such invoices.

Mont. Code Ann. §17-1-106, requires any state agency, including MDT, which receives non-general funds to identify and recover its indirect costs (IDC). These costs are in addition to direct PROJECT costs. MDT's IDC rate is determined annually as a percentage of the PROJECT'S direct costs to cover the PROJECT'S share of MDT's IDC as defined by 2 CFR Part 200, Appendix VII. MDT's current IDC rate is 11.32% for fiscal year 2025 (July 1, 2024, to June 30, 2025). If the work occurs or extends into fiscal year 2026 or beyond the IDC rate will be charged at the rate agreed to by MDT and the Federal Highway Administration (FHWA).

- i. Invoice will be sent to:

Kelly Strecker
City Clerk/Treasurer
115 West 1st St.
Laurel, MT 59044

- ii. Payments shall be made to:

Montana Department of Transportation
Attention: Collections
2701 Prospect Avenue

PO Box 201001
Helena, MT 59620-1001

The remaining terms and provisions of the original Memorandum of Agreement, including any subsequent amendments, remain in full force and effect and are incorporated fully herein.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed.

CITY OF LAUREL

By: 
Mayor

STATE OF MONTANA - DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
Montana Department of Transportation

Approved for Legal Content:

By: _____
MDT Legal Services

Approved for Civil Rights Content:

By: _____
MDT Office of Civil Rights

**MEMORANDUM OF AGREEMENT
BETWEEN CITY OF LAUREL AND THE MONTANA DEPARTMENT OF
TRANSPORTATION FOR THE PLANNING AND CONSTRUCTION OF
WEST RAILROAD STREET**

This memorandum of agreement (MOA) by and between CITY of Laurel, 115 W. 1st Street, Laurel, MT 59044 (CITY), and the Montana Department of Transportation, PO Box 201001, Helena, MT 59620-1001 (MDT) establishes the roles, responsibilities, and commitments relative to the planning, costs, and administration responsibilities necessary for the reconstruction of West Railroad Street from 1st Avenue to 8th Avenue within the Laurel Urban Area.

This PROJECT is in the city of Laurel on West Railroad Street (U-6902) from the junction with 1st Avenue (N-4) to the junction with 8th Avenue (L-56-419A). The scope of work includes reconstruction work on West Railroad Street from the intersection of 1st Avenue to 8th Avenue. This includes one travel lane in each direction, new two-way left-turn lane, curb, gutter, sidewalks, and improvements to the existing roadway.

WHEREAS, MDT is responsible for assuring that the planning, design, approvals and environmental clearances, construction, and maintenance of state and federally-designated highway system facilities provide for the benefit of the traveling public in a safe and efficient manner in accordance with Title 23 United States Code (U. S. C.) and related federal regulation and guidance and Title 60, Montana Code Annotated (MCA); and

WHEREAS, the CITY agrees to be responsible for items identified in this MOA and be responsible for preparing the financial package for the PROJECT; and

WHEREAS, the CITY agrees and understands that the PROJECT will not be programmed for the construction phase until a funding package for all improvements, including contingencies and overruns, is in place to MDT's satisfaction.; and

WHEREAS, the CITY agrees this PROJECT is and will remain the CITY's Urban Highway Program funding priority until constructed; and

WHEREAS, the current estimated cost for all phases of the PROJECT is approximately \$7,600,000¹ including indirect costs (IDC);

WHEREAS, it is mutually agreed upon that a cooperative delineation and identification of duties and responsibilities of the parties is essential to the overall development of this PROJECT.

NOW THEREFORE, the parties set forth below the fundamental duties and responsibilities necessary for this proposed PROJECT.

¹ Cost estimate based on preliminary estimates dated 11/2021, includes all phases, inflation, and IDC.

I. PROJECT DEVELOPMENT

A. MDT:

1. Will develop and let the PROJECT for construction including consultant management, administration, engineering analysis, surveying, design, public involvement, environmental documentation, clearances, plans preparation, acquisition of all appropriate permits, and the provisions of other services required to complete the preconstruction phase, right of way acquisition, and utility relocations in preparation to let and to construct the PROJECT.
2. Agrees all design will be in accordance with MDT's Project Development Procedures and Design Manuals and, where applicable, current MDT and AASHTO urban standards.
3. Agrees to collaborate with the CITY and the consultant on design specific details in all public involvement activities.

B. CITY:

1. Agrees to act as the PROJECT sponsor and will provide appropriate and timely input during the PROJECT's development. The CITY will issue local permits for applicable construction activities.
2. Acknowledges PROJECT design decisions and changes have potential to impact PROJECT schedule and fundability.
3. Agrees to participate and support MDT in public forums, present in collaboration with the consultant and MDT design specific details and PROJECT elements.
4. Agrees to update the local Transportation Coordinating Committee (TCC) regularly. Updates to include PROJECT status including PROJECT decisions affecting STPU funding.

II. ENVIRONMENTAL REVIEW

A. MDT:

1. Will be responsible for the development of documents necessary for compliance with the National Environmental Policy Act (NEPA), 23 CFR 771, Section 106 of the National Historic Preservation Act (NHPA), Section 4(f) of the DOT Act, and the Montana Environmental Policy Act (MEPA), in connection with the actions contemplated in this agreement. MDT will coordinate with FHWA for their approval of the NEPA document, as necessary.

B. All Parties:

1. Understand that the decisions made by MDT and FHWA pursuant hereto and the execution of this agreement do not constitute the irretrievable commitment of resources by MDT or the CITY until all necessary steps are taken with regard to any particular decision to comply with NEPA/MEPA and other applicable state and federal laws.

III. FUNDING

A. MDT:

1. Will bill the CITY for costs in excess of available federal funding or elements that are not federal-aid eligible prior to programming.

B. CITY:

1. Agrees to and acknowledges its responsibility for all costs associated with the PROJECT in excess of available STPU funds, for 100% of non-federal aid eligible costs, and payback of state and federal funds expended on the PROJECT if required.
2. Will provide any necessary local or non-federal match funds and associated indirect costs to MDT within thirty (30) days of billing. MDT will not submit programming requests to FHWA for individual PROJECT phases until the required matching funds and funds for costs in excess of available federal funds, if any, have been transferred to MDT.
3. Agrees, if the CITY actions cause MDT to terminate the PROJECT development at any time, it will reimburse MDT for any and all costs incurred by MDT, including any required payback of Federal funds already expended on the PROJECT, up to the date of the stoppage.
4. Agrees, if the CITY actions result in federal nonparticipation, it will reimburse MDT for any and all costs incurred by MDT, including any required payback of Federal funds already expended on the PROJECT related to all nonparticipation costs.
5. Will develop a comprehensive financial plan, for MDT review and approval, for the PROJECT. The financial plan must address sources of funds in the event of unanticipated cost overruns. This financial plan must be approved before MDT will request programming for the construction phase of the PROJECT.

C. All Parties:

1. Agree and understand 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 200 Appendix VII. MDT's current indirect cost rate is 10.71% for fiscal year 2023 (July 1, 2022, to June 30, 2023).
For this PROJECT, MDT billings to the CITY will include a charge for the indirect costs at the current fiscal year indirect cost rate. This amount will be applied toward the total PROJECT contribution of the CITY, 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.
2. Agree and understand the PROJECT will not be programmed for the construction phase until a funding package for all improvements, including contingencies and overruns, is in place to MDT's satisfaction.
3. Agree current PROJECT cost estimate for all phases is \$7,600,000, this includes IDC, contingency, and inflation to FFY26. Project costs will be assessed at final design. If at final design, the estimate exceeds the available STPU funds described in this Section, the CITY will have the option to modify PROJECT features to best fit the PROJECT needs and budget.

PROJECT funding sources include:

STPU funds FFY 2026 ² :	\$ 5,200,000
Local funding:	<u>\$ 2,500,000</u>
	\$ 7,700,000

4. Agree PROJECT estimates will be updated at PROJECT milestones or as more refined estimates become available until PROJECT closeout. All Parties will meet regularly during the PROJECT development process and during each phase to exchange PROJECT information, ensure PROJECT and funding are tracking together, and identify any outstanding issues.
5. Acknowledge PROJECT design details and changes have potential to impact PROJECT schedule and fundability. PROJECT cost increases above available funding will delay PROJECT delivery timeframes until a complete funding package has been secured.

IV. PROJECT DESIGN PHASE

A. MDT:

1. Will develop constructible design plans, in accordance with MDT design policies, practices, guidelines, and the environmental process for the PROJECT.
2. Will provide the CITY a design phase cost estimate including indirect costs to cover MDT administrative expenses and request for any non-federal match funds.

V. RIGHT-OF-WAY ACQUISITION

A. MDT:

1. Will request federal authorization to proceed with right-of-way acquisitions.
2. Will follow standard procedures to appraise, acquire and certify that all right-of-way donated or purchased for this PROJECT was acquired in accordance with all applicable federal and state laws and regulations required for federal funded projects such as 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition Regulation for Federally Assisted Programs, and the guidelines and procedures contained in MDT's Right of Way Manual.
3. Acknowledges that any right of way donated toward the PROJECT will reduce the overall PROJECT costs and be considered as participation in the PROJECT funding package, subject to limitations of federal/state match requirements, the right of way requirements of the PROJECT, and subject to FHWA approval.

B. CITY:

1. Acknowledges that, according to federal regulations, if right-of-way is donated to a PROJECT, the value of the right-of-way can only be credited

²Estimated Annual Allocations are subject to MDT Transportation Commission approval. Funding Projections are based on best available information and are subject to change given current funding uncertainties and unknown impacts of future congressional or other federal and state actions. Surface Transportation Program (STPU) funds available is dependent on the delivery year of the PROJECT.

after notification from MDT that FHWA authorization to proceed with right-of-way acquisition has been issued and is subject to the following provisions:

- a. Any right-of-way acquired or donated for the PROJECT must be procured in accordance with 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition Regulations for Federally Assisted Programs, and the guidelines and procedures contained in MDT's Right of Way Manual. Per MDT Policy Procedure 8.03.004.1, donated right of way for the PROJECT as in in-kind contribution can be used to reduce the overall PROJECT costs, not to match federal funds. Donated right of way will be valued by MDT as consistent with state and federal requirements.

C. All Parties:

1. Agree valuation of CITY's right of way acquired for the PROJECT will be determined by a qualified appraiser per MDT's discretion.

VI. UTILITIES

A. MDT:

1. Will inform the utility companies responsible for water, storm and sanitary sewer, power, gas, and phone of the future plans for the area and encourage the utility companies to make provision for any utility additions, adjustments, or replacement anticipated within 20 years after the estimated completion of the PROJECT.
2. Will prepare necessary utility agreements for facilities that must be moved because of conflicts with the proposed PROJECT.
3. Will follow standard procedures for utility relocations and will coordinate with the CITY.

VII. CONTRACT AWARD ADMINISTRATION

A. MDT:

1. Will provide a detailed breakdown of all estimated PROJECT costs and bill the CITY accordingly for local contributions as necessary to complete the funding package and bill the CITY in advance for construction of the PROJECT no more than (60) days before bid opening.
2. Bid, award, and administer the construction contract for the PROJECT, once a complete funding package is in place, in accordance with the standard MDT procedures, including obtaining concurrence of award from FHWA.
3. Will not award the PROJECT contract without the CITY's concurrence if the bid price exceeds the available funds or exceeds MDT's Project Award Guidelines.

B. CITY:

1. Will submit payment for its portion of PROJECT cost based on the MDT engineer's estimate for the construction and construction engineering costs to the MDT within thirty (30) days of billing.
2. Agrees if the federal government requires a reimbursement or return of any federal funds because a PROJECT doesn't advance due to CITY's failure to make any scheduled payment, the CITY will reimburse MDT for those federal funds within thirty (30) days of billing.

3. Agrees if at bid opening the CITY concurs with cost increases greater than MDT's Project Award Guidelines, the CITY will pay the increased costs in excess of available STPU funds within thirty (30) days of MDT's billing.
4. Agrees if at bid opening the CITY does not concur with cost increases greater than 10% of MDT's estimate, MDT will not award the PROJECT.
5. Agrees payments to this PROJECT will be coordinated through the MDT's Administration Division and will be provided to MDT staff in the form of a check to be deposited and credited to this PROJECT. Please make the check payable to the "Montana Department of Transportation" and send your payment to:

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

The contact for billing and accounting questions for the MDT will be:
Ben Ternes
Special Project Accountant
P.O. Box 201001
Helena, MT 59620-1001

The contact for billing and accounting questions for the CITY will be:
Kelly Strecker
City Clerk/Treasurer
115 West 1st St.
Laurel, MT 59044

C. All Parties:

1. Agree project costs will be assessed at final design. If at final design, the estimate exceeds the available STPU funds described in Section III, the CITY will have the option to modify PROJECT features to best fit the PROJECT needs and budget.
2. Understand it is possible that the PROJECT estimate may be exceeded once construction has begun. MDT will inform the CITY beforehand, and as early as possible, of anything that appears will result in a cost increase in excess of available STPU funds and will discuss the need for any possible change order with the CITY. It is agreed the CITY does not have the ability to veto or delay, or refuse to pay for, any change orders deemed necessary by MDT. Change orders, costs increase or unforeseen expenses in excess of available STPU funds will be borne by the CITY.
3. Agree the CITY's portion of the cost of any change order will be billed as early as it can be readily determined and will be due and payable by the CITY within thirty (30) days of the statement.
4. Agree within six (6) months after the PROJECT has been finally accepted with the final costs submitted, MDT will submit a final statement to the CITY. The final statement will be in the form of an invoice and provide details of any expenses that may be identified as "miscellaneous," billing the CITY for cost overruns, or it will be a check, for overpayment by the CITY. The CITY must

submit payment to MDT within thirty (30) days of billing. If payment is not made within that thirty (30) day period, interest on the unpaid amount will accrue at the rate of 10% per year and continue to accrue until paid in full. If the CITY is billed for additional funds, MDT will not participate in any future funding agreements with the CITY until full payment, including interest, is received from the CITY.

VIII. PROJECT CONSTRUCTION PHASE

A. MDT:

1. Will request programming of STPU funds and program local funds necessary to complete the funding package for the construction phase of the proposed PROJECT.

B. CITY:

1. Acknowledges the funding plan must demonstrate that all components of the PROJECT will be completed.
2. Acknowledges FHWA construction phase approval is contingent on an acceptable and comprehensive funding plan for the completed PROJECT.
3. Acknowledges the value of quantifiable materials and other MDT and FHWA approved in-kind contributions can also be credited to reduce overall PROJECT costs if all specifications are met and the transfer of ownership is accomplished after the PROJECT is programmed. No other contributions or services will be credited.

C. All Parties:

1. Agree and understand that MDT's funding contribution is contingent on the conditions described herein and therefore the PROJECT will not be programmed for the construction phase until:
 - a. a funding package for the PROJECT through construction, including contingencies and overruns, is in place to MDT's satisfaction; and
 - b. all approvals, clearances and permits are obtained.

IX. GENERAL TERMS AND CONDITIONS

1. Term – The term of this Agreement shall be ten (10) years. After the initial ten (10) year term, this Agreement will renew automatically, for successive one (1) year terms, unless superseded by a new Agreement between the parties.
2. Termination – This Agreement may be terminated by MDT if the CITY violates or breaches any term, condition, or article of this Agreement and the CITY has failed to correct (or reasonably initiate correction) within 60 days of receiving notice in writing addressed to the CITY's representative, of such violation or breach of any term, condition, or article of this Agreement.
3. 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.
4. Hold Harmless & Indemnification
 - a. The CITY agrees to protect, defend, indemnify, and hold MDT, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and

reasonable attorney fees) arising in favor of or asserted by the CITY's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of the CITY, its agents, or sub-contractors, under this Agreement, except the negligence of MDT.

- b. The State and Department of Transportation agrees to protect, defend, indemnify, and hold the CITY, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the MDT's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of MDT, its agents, or sub-contractors, under this Agreement, except the negligence of the CITY.

5. Insurance

- a. General Requirements: Each party shall maintain for the duration of this Agreement, at its own cost and expense, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the duties and obligations in this Agreement by each party, its agents, employees, representatives, assigns, or sub-contractors. This insurance shall cover such claims as may be caused by any negligent act or omission.
- b. General Liability Insurance: Each party shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1 million per occurrence and \$2 million aggregate per year to cover such claims as may be caused by or arising out of any negligent acts or omissions in work or services performed under this Agreement, or as established by statutory tort limits as provided by a public entity self-insurance program either individually or on a pool basis as provided by Mont. Code Ann. Title 2, Chapter 9.
- c. General Provisions: All insurance coverage must be with a carrier licensed to do business in the State of Montana or by a public entity self-insured program either individually or on a pool basis. Each party must notify the other immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. Each party reserves the right to request complete copies of the other party's insurance policy or self-insured memorandum of coverage at any time.
- d. Workers' Compensation Insurance: The CITY must maintain workers' compensation insurance and require its contractors and its contractor's sub-contractors to carry their own workers compensation coverage while performing work within MDT right-of-way in accordance with Mont. Code Ann. §§39-71-401 and 39-71-405. Neither the contractor nor its employees are employees of MDT. This insurance/exemption must be valid for the entire Agreement period.

6. Public Safety

- a. It is agreed, if any repairs to the elements of the PROJECT must be performed to address or prevent a public hazard, the CITY will immediately protect the area from public access, contact the appropriate MDT District

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

7. Invoicing and Indirect Cost (IDC)

- a. If MDT incurs any costs resulting from this Agreement, MDT shall be entitled to be compensated for such costs by the CITY and the CITY shall pay the same within thirty (30) days of its receipt of such invoices.

Mont. Code Ann. §17-1-106, requires any state agency, including MDT, which receives non-general funds to identify and recover its indirect costs (IDC). These costs are in addition to direct PROJECT costs. MDT's IDC rate is determined annually as a percentage of the PROJECT'S direct costs to cover the PROJECT'S share of MDT's IDC as defined by 2 CFR Part 200, Appendix VII. MDT's current IDC rate is 10.71% for fiscal year 2023 (July 1, 2022, to June 30, 2023). If the work occurs or extends into fiscal year 2024 or beyond the IDC rate will be charged at the rate agreed to by MDT and the Federal Highway Administration (FHWA).

- i. Invoice will be sent to:

Kelly Strecker
City Clerk/Treasurer
115 West 1st St.
Laurel, MT 59044

- ii. Payments shall be made to:

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

8. 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. In case of conflict between the terms and conditions of this Agreement and the laws of the State of Montana, the laws of the State of Montana shall control.
9. 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.
10. 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.
11. Non-Discrimination – The CITY will require that during the performance of any work arising out of this Agreement the CITY, for itself, assignees, and successors shall comply with all applicable non-discrimination regulation set forth in Attachment "A" attached hereto and made part of this Agreement.

12. ADA - MDT requires that any construction resulting from this Agreement must include appropriate pedestrian facilities that meet or exceed current MDT policies and guidelines for accessibility as set forth by the United States Department of Justice 2010 ADA Standards for Accessibility Design, United States Access Board Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way (2011 PROWAG), and MDT's detailed drawings, 608 series.
13. Audit – The CITY 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 CITY maintains in connection with this Agreement.
14. 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.
15. Amendment and Modification -- This Agreement may be modified or amended only by written Addendum signed by the parties. In addition to the terms and conditions contained herein, the provisions of any Addendum may be incorporated and made a part hereof by this reference in the terms of the amendment so provided. In the event of any conflict between the terms and conditions hereof and the provisions of any Addendum, the provision of the Addendum shall control, unless the provisions thereof are prohibited by law.
16. Representatives
 - a. CITY's Representative: The CITY's Representative for this Agreement shall be the CITY Manager or designee or such other individual as CITY shall designate in writing. Whenever approval or authorization from or communication or submission to CITY is required by this Agreement, such communication or submission shall be directed to the CITY's Representative and approvals or authorizations shall be issued only by such Representative; provided, however, that in exigent circumstances when CITY's Representative is not available, MDT may direct its communication or submission to other designated CITY personnel or agents.
 - b. MDT's Representative: The MDT Representative for this Agreement shall be the District Administrator or Maintenance Chief or such other individual as MDT shall designate in writing. Whenever direction to or communication with MDT is required by this Agreement, such direction or communication shall be directed to MDT's Representative; provided, however, that in exigent circumstances when MDT's Representative is not available, CITY may direct its direction or communication or submission to other designated MDT personnel or agents.
17. 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.

CITY OF LAUREL

DocuSigned by:
David Waggoner
By: _____
AFB77EE0A9364CE...
City Manager

STATE OF MONTANA - DEPARTMENT OF TRANSPORTATION

DocuSigned by:
Rob Stapley
By: _____ Date: 1/2/2023
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Montana Department of Transportation

Approved for Legal Content:

DocuSigned by:
Valerie Balukas Attorney MDT
By: _____
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MDT Legal Services

Approved for Civil Rights Content:

DocuSigned by:
Megan Handl, Civil Rights
By: _____
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Office of Civil Rights

**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, national origin,
sex, sexual orientation, gender identity,
age, disability, income-level & Limited
English Proficiency

State protected classes

Race, color, national origin, parental/marital status,
pregnancy, childbirth, or medical conditions related to
pregnancy or childbirth, religion/creed, social origin or
condition, genetic information, sex, sexual orientation,
gender identification or expression, ancestry, age,
disability mental or physical, 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. The PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. A statement that the PARTY does not discriminate on the grounds of any protected classes.
 - ii. A statement that the 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 the 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, the 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 the 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 will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml
- b. By signing this agreement, the PARTY assures MDT 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. The 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), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (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, 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 (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

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 paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. 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.

Exhibit B

**MONTANA TRANSPORTATION COMMISSION
POLICY STATEMENT**

Adopted by the Montana Transportation Commission
during regular session on April 7, 1998 – Revised November 22, 2002
Policy Number _____ 06

URBAN HIGHWAY PROGRAM BORROW POLICY

Background

Each year the Transportation Commission allocates a portion of the Federal Aid Surface Transportation Program funds to the Urban Highway System. The annual allocation is used to fund construction projects on the designated urban highways in Montana's fifteen urban areas.

State statutes and past commission action have allowed urban areas to borrow against their anticipated Urban Highway Program funds. Recognizing that Urban Highway Program funds are apportioned solely on the basis of urban population and that the apportionments vary greatly among the fifteen urban areas, this policy seeks to better manage the program through setting understandable borrowing limits.

Policy

1. The projects must be on the State Urban Highway System as defined by the Montana Transportation Commission to be eligible for Urban Highway Program funds.
2. Each city (urban area) can borrow up to five years of its current year apportionment for the benefit of eligible projects but the total amount advanced cannot exceed one-half the total amount apportioned to the State Urban Highway Program.