

**FUNDING MEMORANDUM OF AGREEMENT BETWEEN  
CITY OF MISSOULA AND THE MONTANA DEPARTMENT OF TRANSPORTATION  
FOR THE HIGGINS AVENUE BRIDGE REHABILITATION**

This Memorandum of agreement (MOA or Agreement) by and between City of Missoula (CITY), and the Montana Department of Transportation (MDT) establishes the funding the city will provide in conjunction with Federal monies for rehabilitation of the Higgins Ave. Bridge, UPN 8807000 (PROJECT).

**WITNESSETH**

This project is in the city of Missoula on Higgins Avenue including the bridge over the Clark Fork River. The project would address the bridge condition, and improve the capacity for non-motorized use on the bridge. The current sidewalk width on the bridge is 4'-2 1/8". The proposed non-motorized width would be 12' on the north bound (east) side, and 13' on the south bound (west) side. The bridge would be widened on the south bound (west) side only to better accommodate non-motorized use. Exhibit B shows the proposed and existing bridge typical section. The widening would include the use of a Fiber Reinforced Polymer (FRP) deck. The project will also include new bridge railing, lighting, improvements to the intersection of 3<sup>rd</sup> Street and Higgins Avenue, stair removal on the east side, and adjustment to the stairs on the west side of the bridge.

The estimated total cost for all phases is approximately \$11.6M. The project was approved by the Missoula Transportation Policy Coordinating Committee on August 19, 2014, and is consistent with the Missoula Transportation Plan.

WHEREAS, the MDT, CITY, and Federal Highway Administration (FHWA) will participate in the funding, development and construction of the project upon agreement by the CITY to the conditions set forth; and,

WHEREAS, the MDT is responsible for assuring the planning, design, approvals and environmental clearances, construction and maintenance of state and federally-designated highway system facilities provided 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 guidelines and Title 60, Montana Code Annotated (MCA); and,

WHEREAS, the identification of duties and responsibilities will be mutually agreed upon between the parties and is essential to the overall development of this PROJECT;

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

**I. PROJECT DESCRIPTION**

The intent of the PROJECT and funding provided: CITY funding and STPB funding, is to rehabilitate the Higgins Avenue Bridge. The project would address the bridge condition, and improve the capacity for non-motorized use on the bridge. The current sidewalk width on the bridge is 4'-2 1/8". The proposed non-motorized width would be 12' on the north bound (east) side, and 13' on the south bound (west) side. The bridge would be widened on the south bound (west) side only to better accommodate non-motorized use. Exhibit B shows the proposed and existing bridge typical section. The widening would include the use of a Fiber Reinforced Polymer (FRP) deck. The project will also include new bridge railing, lighting, improvements to the intersection of 3<sup>rd</sup> Street and Higgins Avenue, stair removal on the east side, and adjustment to the stairs on the west side of the bridge.

**II. PROJECT DEVELOPMENT**

MDT will develop the PROJECT including: engineering analysis, public involvement, design, environmental documentation, clearances, plans preparation, acquisition of all appropriate permits, and the provisions of other services required to complete the preconstruction phase.

**III. FUNDING**

**A. All Parties:**

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 10.97% for fiscal year 2017 (July 1, 2016 to June 30, 2017). 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.

1. Agree and understand 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.

2. PROJECT cost estimate for all phases is \$11.6M\*

PE	\$1.2 M
RW	\$100,000
IC	\$200,000
CN	\$9.0 M
CE	<u>\$1.1 M</u>
	\$11.6 M

\*includes IDC and inflation, estimates rounded to nearest hundred thousand.

Currently identified funding sources include:

CITY funding:	\$1,600,000
STPB (2020):	<u>\$10,000,000</u>
	\$11,600,000

**IV. MAINTENANCE**

**CITY:**

1. The City, at the City's sole expense, agrees to maintain the sidewalks in satisfactory condition, including, but not limited to, resurfacing, and maintaining ADA compliance within MDT and public right-of-way. Any damage must be repaired within 30 calendar days of MDT written notification, or at a time determined by mutual agreement. If the damage creates an unsafe situation, it must be repaired or addressed immediately.
2. The CITY agrees to be solely responsible for any landscaping that may be included in the PROJECT.
3. The CITY agrees to be responsible for winter maintenance of the bicycle and pedestrian facilities on the bridge, including the sidewalks.
4. The City agrees to be responsible for any and all damages to MDT's facilities caused by the City, the City's staff or contractors, or resulting from the City's operations. The City must repair any and all damages, at its sole expense, after notification of damage by MDT and MDT's approval of repair work needed, method of repair, and schedule of repair.
5. The City agrees that no fixture, building, structure, or other permanent installation other than those approved by MDT shall be constructed or placed as part of the Project within MDT right-of-way without prior written approval from MDT.
6. If the City is not able to complete the Maintenance requirements, MDT may complete the required maintenance and require reimbursement of its costs from the City.

**V. CONTRACT AWARD ADMINISTRATION**

**A. CITY:**

1. Will pay MDT immediately upon receipt of an invoice from MDT. If payment is not received by MDT within 30 days of the date of the invoice, project will not be advertised and interest on the unpaid amount will accrue at the rate of 10% per year, and continue to accrue until paid in full.
2. Payment will be coordinated through MDT's Administration Division, and will be provided to MDT in the form of a single check to be deposited and credited to this project.
3. Checks should be made payable to the "Montana Department of Transportation" and sent 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:  
Jeff Olson  
Special Projects Accountant  
PO Box 201001  
Helena, MT 59620-1001

The contact for billing and accounting questions for the CITY will be:  
Leigh Griffing  
Assistant Finance Director - Missoula  
435 Ryman St.  
Missoula, MT 59802

4. 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 agrees that it will reimburse MDT for those federal funds within thirty (30) days of billing.

**B. MDT:**

1. Will provide an invoice and bill the CITY a one-time contribution of \$1,600,000 in advance for construction of the PROJECT no more than sixty (60) days before bid opening.
2. Once a complete funding package is in place, will bid, award and administer the construction contract for the PROJECT in accordance

with the normal MDT procedures, including obtaining concurrence of award from FHWA.

C. All Parties:

1. Understand that it is possible that the PROJECT estimate may be exceeded once construction is begun, and any change orders, increases, or unforeseen expenses will be borne by MDT.

VI. OTHER

- A. Governing Law: The laws of the State of Montana will govern this agreement. Venue for litigation will be in Lewis and Clark County, State of Montana. In case of conflict between the obligation imposed by this funding agreement and Montana law, then Montana law will control.
- B. Access and Retention of Records: The CITY agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine compliance with this Agreement. MDT 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.
- C. 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.
- D. Relationship of the Parties: Nothing contained in this funding 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 MDT and the CITY.
- E. Modification and Amendment: This funding agreement may be modified or amended, in writing, by the mutual consent of the parties involved up to and until award of the contracts for the PROJECT. Such changes may develop from engineering analysis, public input of federal statutory/regulatory changes.

MDT funding commitments cannot be changed without Transportation Commission approval.

F. Complimentary Agreements: The signatories of this funding agreement may enter into separate agreements during the development of the proposed PROJECT. Any such agreements will not supersede this funding agreement.

G. Termination: Both the MDT and The CITY agree to move in an efficient and expeditious manner toward 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. The funding agreement may not be terminated once a contract or contracts have been awarded for construction of the PROJECT. If the CITY terminates the agreement, MDT will amend the PROJECT Scope of Work removing items funded by the CITY.

H. Hold Harmless and Indemnification: The CITY shall 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 judgements (include 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 damage to property, bodily or personal injury, or death arising out of any services performed, act or omission that in any way results from the acts or omissions of the City, or their agents, or subcontractors, under this Agreement, except the negligence of MDT under this Agreement. The City will require its contractors, agents or subcontractors to maintain adequate insurance as per Article VI, K of this Agreement, and name the state as additional insured.

MDT shall 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 judgements (include 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 damage to property, bodily or personal injury, or death arising out of any services performed, act or omission that in any way results from the acts or omissions of the MDT, or their agents, or subcontractors, under this Agreement, except the negligence of the City under this Agreement.

I. Insurance: The City shall maintain for the duration of the Agreement at their cost and expense insurance against claims for injuries to persons or damages to property which may arise from or in connection with any act or omission by the City and their agents, employees, representative, assigns or subcontractors. This insurance shall cover such claims as may be caused by any intentional or negligent act or omission of the City. The City's insurance coverage shall be primary insurance with

respect to MDT, its officers, officials, employees and volunteers and shall apply separately to the subject property and its locations. Any insurance or self-insurance maintained by MDT, its officers, officials, employees or volunteers shall be excess of the City's insurance and shall not contribute to it.

- a) **Commercial General Liability Insurance:** The City shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage as set forth below, to cover such claims as may be caused by any act, omission, or negligence of the City or their officers, agents, representatives, assigns, or subcontractors. Commercial General Liability insurance covering all operations under the Agreement shall have coverage substantially similar to the standard ISO Commercial General Liability Insurance policy, the limits shall be:

Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000
Excess/Umbrella Liability Insurance	\$4,000,000

Any party classified as a governmental entity may meet the insurance requirement of this Agreement through self-insurance or risk sharing pool coverage which meets Montana statutory tort limits. Proof of self-insurance or risk sharing pool coverage must be provided to MDT before commencement of the Agreement activities. The City must notify the State immediately of any change in insurance coverage during the term of this Agreement, and must meet the limits of private insurance shown above should self-insurance or risk sharing pool coverage be discontinued.

- b) **Additional insured status:** The State, MDT, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds arising out of the activities performed by or on behalf of the City, including the insured's general supervision of any Contractor; products, and completed operations; premises owned, leased, occupied or used.
- c) **Certificates of Insurance:** Insurance is to be placed with an insurer with a Best's rating of no less than A-. The Best's rating requirement does not apply to any governmental entity self-insurance or risk-sharing pool insurance coverage. The City must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, changes in status of policy, etc. The State

reserves the right to require complete copies of insurance policies at any time.

- d) **Workers' Compensation Insurance:** The City is required to maintain workers' compensation insurance or an independent contractor's exemption covering the contractor and/or employees while performing work within MDT right-of-way in accordance with §39-71-401/405, Montana Code annotated. Neither the contractor nor its employees are employees of MDT. This insurance/exemption must be valid for the entire Agreement period.

- J. **Public Safety:** It is agreed, if any repairs to the Project or future City construction projects must be done to prevent a public hazard, the City will immediately protect the area from public access, contact MDT Missoula District, and take corrective action to repair the hazard.

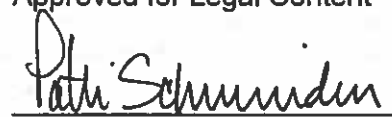
- K. **NonDiscrimination and Disability Accommodation Notice:** The CITY, for itself, its assignees and successors in interest, agrees to comply with the provisions of Exhibit A, "MDT NonDiscrimination and Disability Accommodation Notice," which is attached hereto and incorporated by reference. The CITY is referred to as the "PARTY" in said Exhibit, and the City's duties and responsibilities are those duties and responsibilities of the "PARTY."



STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

By  6/13, 2017  
Administrator - Engineering Division

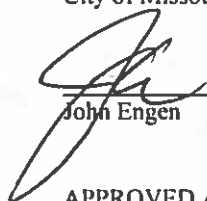
By   
Approved for Legal Content

By  6.23.17  
Approved for Civil Rights Content

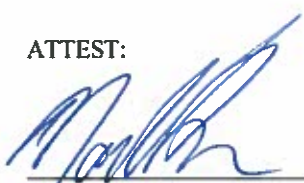
ATTEST:

CITY OF MISSOULA

MAYOR  
City of Missoula, Montana

  
John Engen

ATTEST:

  
Martha L. Rehbein, CMC, City Clerk

APPROVED AS TO FORM AND CONTENT:

  
Jim Nugent, City Attorney

(SEAL)



## 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, & 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, national origin,  
ancestry, age, disability mental or physical, political  
or religious affiliations or ideas, military service or  
veteran status

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 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](http://mdt.mt.gov/business/contracting/civil/dbe.shtml)
- 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), (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.

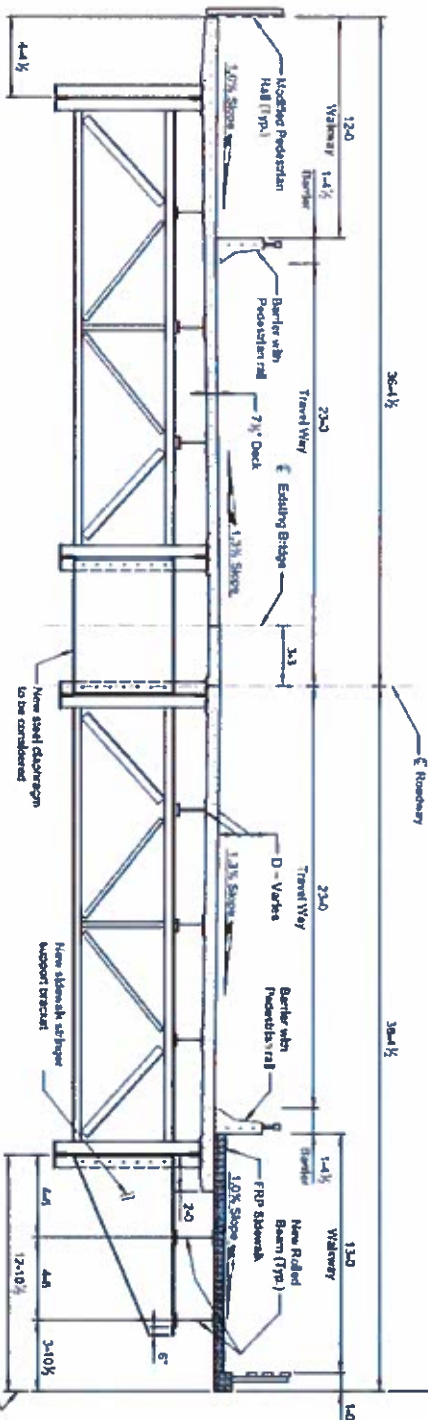
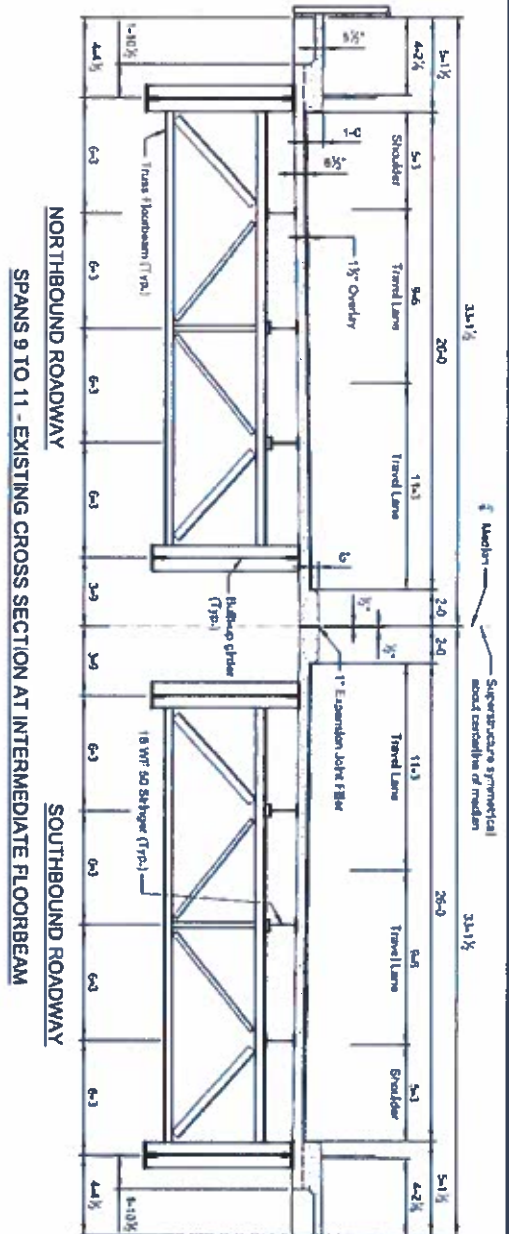
#### State

- 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



H2R

Legend  
FRP Deck Material

PRELIMINARY

**MDTA** Montana Department of Transportation  
HIGGINS AVE BRIDGE REHAB - MISSOULA  
STPB 8113(8)  
DECK REPLACEMENT OPTION 5 FRP  
October, 2015  
Scale - 1/8" = 1'-0"