

**Memorandum of Agreement  
Between the  
Montana Department of Transportation (MDT) and the City of Missoula (City)  
for CM 8199 (114), UPN 7259 003, 2013 MSLA – Bike/Ped Striping**

This Agreement is made and entered into by and between the Montana Department of Transportation (MDT), and the City of Missoula to address bicycle and pedestrian needs within the Missoula urban limits by the application of epoxy pavement marking material to specified bike/ped facilities. The parties to this Agreement agree to the following:

1. The purpose of this Agreement is to set forth the terms and conditions relative to the development and construction of a Congestion Mitigation and Air Quality Project titled Missoula – Bike/Ped Striping. The scope of work includes the application of epoxy paint to re-stripe existing bike/ped facilities located on State Primary Route 7 and 107/US 12 and various State Urban Routes within the Missoula Urban limits. See attachment #1 for specific locations.
2. MDT and the City of Missoula recognize the need to develop and construct such facilities and are willing to share in the costs of the proposed project in accordance with this agreement.
3. This project is eligible for up to \$34,632 of federal funding under the CMAQ program, and the financial participation will be 86.58% federal and 13.42% local match. The maximum amount of CMAQ Program and local match funds available for this project is \$40,000, for which the state will provide up to a maximum of \$34,632 for construction (CN). The local agency will be responsible for the match amount and any costs associated with the project in excess of \$40,000. If the final project costs are less than the maximum CMAQ Program/local match amount, the CMAQ Program and local match funds will be recalculated to retain the federal/non-federal match rate (86.58/13.42).

Maximum CMAQ Program/local matching funds

MDT CMAQ funds (includes IDC)	\$34,632
City of Missoula Match (includes IDC)	<u>\$ 5,368</u>
Total cost	\$40,000

4. 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 225 (formerly OMB Circular A-87). MDT's current indirect cost rate is 11.08%, which will be applied to the local share portion of the total project cost.

For this project, MDT billings to the City of Missoula will include a charge for the indirect costs at the current fiscal year indirect cost rate, which amount will be applied toward the total project contribution of the City of Missoula. Note: 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

5. Method of payment – MDT will invoice The City of Missoula for the non-federal match calculated in (3) **plus** the indirect cost rate shown under (4) and the local agency will submit payment to MDT within thirty (30) days of billing. If the total cost of the project listed in (3),

is greater, the City will be 100% responsible for all funds above the amount listed in (3) and MDT will invoice the City, which is due within thirty (30) days. 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 does not make timely payment, MDT may not participate in any future funding agreements with the City until full payment, including interest, is received. The contact for billing, accounting and change order questions for the Local Agency shall be:

Kevin Slovarp  
City of Missoula  
435 Ryman St.  
Missoula MT 59802  
(406) 552-6099

6. Access and Retention of Records – The City of Missoula agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine compliance with this Agreement. The City of Missoula 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.

7. Assignment, Transfer and Subcontracting – The City of Missoula shall not assign, transfer or subcontract any portion of this Agreement without the express written consent of the State.

8. Choice of Law and Venue – In the event of litigation concerning this Agreement, venue will only be in District Court of the First Judicial District of the State of Montana in and for the County of Lewis and Clark. This Agreement will be interpreted according to Montana law.

9. Agreement Modification – Any change to this Agreement will only be by written agreement between parties.

10. 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, inquire, negotiation, contract, or any other form of communication shall be a provision of this Agreement unless specifically provided within the written terms herein.

11. Compliance with Laws – The City of Missoula must, in the performance of this Agreement, fully comply with all applicable federal, state or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Attachment A, Non-Discrimination Notice, is incorporated into this Agreement and during the performance of this Agreement, the City of Missoula for itself, its assignees and successors in interest, agrees to adhere to the contents of Attachment A.

12. Termination – The parties may mutually terminate this Agreement in writing at any time. MDT, at its sole discretion, may terminate or reduce the scope of this Agreement if available funding is reduced for any reason. MDT may terminate this Agreement in whole or in part at any time the City of Missoula fails to perform the Agreement terms as set forth.

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

STATE OF MONTANA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Lynn Zanto  
Planning Administrator

Dated: \_\_\_\_\_, 2013

Approved for Legal Content

By: \_\_\_\_\_  
MDT Legal Services

Dated: \_\_\_\_\_, 2013

THE CITY OF MISSOULA

By: \_\_\_\_\_  
John Engen  
Mayor

Dated: \_\_\_\_\_, 2013

By: \_\_\_\_\_  
Missoula City Attorney

Dated: \_\_\_\_\_, 2013

## Attachment #1

Department Name	Signed Route	Beginning RP	Length
P7	Higgins Avenue 5 <sup>th</sup> to Brooks	93.067	0.995
P-107N	5 <sup>th</sup> Street Higgins to Arthur	0.108	0.373
P-7N	6 <sup>th</sup> Street Higgins to Arthur	94.053	0.39
U8124	Mullan Broadway to Reserve	0.0	0.893
U8120	South Ave Brooks to Holborn	3.09	0.31
U8113	Higgins S 4 <sup>th</sup> to 5th	0.0	0.083
U8112	Broadway Van Buren to Easy St	0.0	1.3

## NON-DISCRIMINATION NOTICE

During the performance of this Agreement, the City of Missoula (hereafter in this Section “the Party”), for itself, its assignees and successors in interest, agrees as follows:

**A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS**

- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
  - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
  - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.

- (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

**B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, SEC. 49-3-207, MCA**

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

**C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

- (1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **"The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party."**
- (1) All video recordings produced and created under contract and/or agreement will be closed-captioned.

**D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26**

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

**The Party, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Party to carry out these requirements is a material**

**breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate**