**CITY-MAINTAINED URBAN HIGHWAY SYSTEM ROUTES**

**CITYWIDE MEMORANDUM OF AGREEMENT**

**Between**

**City of [CITY NAME) and the Montana Department of Transportation**

**[Month Year]**

This Memorandum of Agreement (Agreement) is made and entered into by and between the City of [**CITY NAME]** (“the City”), **ADDRESS** and the Montana Department of Transportation (“MDT”), P.O. Box 201001, Helena MT 59620-1001, together referred to as “the Parties.”

The Purpose of this Agreement is to set forth the respective responsibilities and duties of the City and MDT associated with the City’s performance of construction and maintenance of roadway and right-of-way features on Urban Highway System **ROUTES** designated by the Montana Transportation Commission (“Commission”) not maintained by MDT (hereinafter “**ROUTES**”)**, PER ATTACHMENT B (LIST OF CITY-MAINTAINED ROUTES) and ATTACHMENT C (MAP OF CITY-MAINTAINED ROUTES)**. This Agreement sets forth the terms necessary for the City to perform construction, install, and have authority for right-of-way features and encroachments, and provide roadway and right-of-way feature maintenance on the **ROUTES,** and

**WHEREAS**, **ROUTES** are the Commission-Designated Urban Highway System within the City limits, eligible for Surface Transportation Program Urban (“STPU”) funds; and

**WHEREAS** the City limits shall include all limits as determined or amended by the City during the term of this Agreement and as shown on the most-current Attachment B **ROUTES** List and Attachment C Map; and

**WHEREAS,** roadways within City limits designated as National Highway (NH) System or Primary routes are excluded from this Agreement and remain under MDT obligation to develop, administer, design and construct projects; and

**WHEREAS** the duties and responsibilities of the Parties on Commission-designated routes that are MDT-maintained routes within the City limits are excluded from this Agreement; and

**WHEREAS**, extension of these **ROUTES** that are beyond city limits but within Urban Boundaries require separate Agreements with other governmental entities for roadway obligations between the City limits and the Urban Boundary; and

**WHEREAS**, in accordance with the State’s agreement with the Federal Highway Administration (FHWA) of the U.S. Department of Transportation, MDT must ensure certain requirements are met in order for MDT to fulfill its obligations to the FHWA and for the **ROUTES** to remain eligible for STPU funds; and

**WHEREAS**, the City concurs with the Urban Highway System designation of the **ROUTES** designated under Mont. Code Ann. §60-2-126,

**NOW, THEREFORE**, in consideration of the following mutual promises the Parties agree as follows:

**ARTICLE I – DEFINITIONS**

1. *City- or local entity-administered projects* – means projects which are developed, administered, designed, and constructed by the City or a local entity with City approval. After project completion, maintenance responsibility remains with the City.
2. *Local entity* - means a developer or other third-party entity proposing a project which requires City review and approval.
3. *MDT-administered projects* – means projects which are developed, administered, designed, and constructed by MDT in consultation with the City. After project completion, maintenance responsibility remains with the City.
4. *Roadway maintenance* – means standard and reasonable activities to maintain the roadway in a safe and effective manner including such activities as: snow removal, repair of roadway surfaces without adding structure(e.g. chip sealing, crack sealing, slurry sealing), striping, sign and signal repair and installation (not affecting or intersecting adjacent MDT routes), curb repair, etc.
5. *Right-of-way feature maintenance* – means standard and reasonable activities to maintain all right-of-way features in a safe and effective manner and in accordance with established local policies and ordinances, including but not limited to such features as: sidewalks, shared use paths, lighting, landscaping, irrigation features, signs, benches, bikes racks, planters, tree grates, etc.
6. *Urban boundary* – means an urban cluster as designated by the Bureau of the Census having a population of 5,000 or more within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the U.S. Secretary of Transportation. Such boundaries shall encompass, at a minimum, the entire urban place designated by the Bureau of the Census and may extend beyond adopted City limits. The urban boundary for the City is shown on Attachment C Map.

**ARTICLE II – PROJECT TYPE - ADMINISTRATIVE ROLES**

1. The Parties agree that the **ROUTES** may be improved, funded, and administered by MDT, the City, or a local entity.
2. All City and local entity funded and administered maintenance of roadway and right-of-way features on **ROUTES** are exempt from Commission authority and are not under Commission jurisdiction.
3. All City and local entity funded and administered placement of features in the right-of-way on **ROUTES** that do not change the nature or operation, add structure, change the alignment, or change the physical characteristics of the roadway are exempt from Commission authority and are not under Commission jurisdiction.
4. The City agrees to submit all projects which do not meet the requirements of Article II Section C above for City or local entity administered roadway and right-of-way projects on ROUTES to MDT. MDT will review proposed projects to determine whether the proposed project must be prioritized, selected, and approved by the Commission and whether the proposed project complies with applicable Federal project planning and selection procedures including but not limited to 23 CFR Chapter 1, Subchapter E, Part 450 and 771, and 49 CFR Part 613. MDT will initiate Commission action as set forth in Mont. Code Ann. §§ 60-2-110 & 60-2-111. If approved through Commission action, including execution of a Citywide or project specific maintenance agreement, the City may proceed to implement the project without further review by MDT.
5. Federal-aid projects funded or administered through MDT must meet MDT’s design standards.

**ARTICLE III - GENERAL OBLIGATIONS OF THE CITY**

1. The City agrees to accept jurisdictional authority to operate and maintain roadway and right-of-way features on the **ROUTES** and must operate and maintain all the completed projects at its sole expense, regardless of project type, including MDT, City or City-approved local entity/developer administered projects.
2. Unless specified otherwise herein, or in accordance with project development and as documented by subsequent agreement (e.g. project agreement), the City agrees to fund any additional costs MDT may incur for MDT projects which impact any features the City places in the right-of-way.
3. At locations where a **ROUTE** intersects an MDT-maintained route, MDT must review any proposed project which impacts the operations of the intersection (e.g. adjustments to striping, adjustments to signal timing, bulb-out, drainage, City issuance of approach permit impacting the intersection, etc.). At such intersections, MDT and the City will jointly review and define the limits of the intersection and MDT and City maintenance obligations within the intersection. MDT will approve project requests that meet all current applicable MDT Design Standards and Specifications. Projects that are not designed according to MDT Design Standards and Specifications but meet Montana Public Works Standards or other standards will be considered on a case-by-case basis.
4. The City agrees to provide MDT city limit adjustment updates during MDT’s yearly fuel tax allocation process.

**ARTICLE IV - OBLIGATIONS OF THE CITY – NON-MDT ADMINISTERED PROJECTS**

1. The City agrees to conform with all requirements set forth in Mont. Code Ann. Title 60, related to Urban Highway System public highways and MDT and Transportation Commission authority including but not limited to Mont. Code Ann. §§ 60-2-110 & 60-2-111.
2. The City agrees to perform all roadway and right-of-way feature planning, permitting, design, construction, reconstruction, and maintenance of **ROUTES**, as described in this Agreement.
3. The City agrees to ensure all projects within the right-of-way on **ROUTES,** are consistent with adopted local planning documents, including but not limited to the adopted growth policy, design standards and ADA Transition Plan.
4. The City agrees any construction resulting from this Agreement must comply with Montana Public Works Standards (as modified and approved by the City), and the Manual on Uniform Traffic Control Devices (MUTCD), and in accordance with sound engineering judgment. Projects which include pedestrian facilities must meet or exceed current standards 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.
5. The City 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, less restrictive than the traffic laws in Mont. Code Ann. Title 61, Chapter 8.
6. The City shall complete the necessary environmental processes for modification to the **ROUTES** and demonstrate that all, if any, environmental issues associated with the proposed project have been identified and mitigated. The City agrees it will prepare and file any required environmental documents and apply for and obtain any permits required by other governmental agencies at no expense to MDT prior to maintenance taking place within Commission-designated right-of-way.
7. The City agrees to conduct a final inspection of all work done on construction and re-construction projects and request any improvements or corrections necessary to comply with terms of this agreement before accepting the work.
8. The City assumes all responsibility for ensuring and enforcing safe working conditions and compliance with all safety-related rules and regulations for the benefit of its own employees, the employees of subcontractors and the public on City construction projects, including all duties related to safety, regardless of whether any such duties are, or are alleged to be “non-delegable,” (e.g. the Montana Scaffolding Act, the Montana Safe Place to Work statute, etc.), and will indemnify MDT for these rules and regulations as stated in this Agreement.
9. The City has authority, responsibility, and discretion for reviewing, approving, and removing approaches, and if applicable, issuing approach permits onto, upon and over the right-of-way of the **ROUTES.** City agrees to review approaches according to the terms and conditions established by the City by ordinance or rules, and in a manner ensuring any approved approach does not interfere with the safe and efficient use of the vehicle travel lanes or the non-motorized travel facilities (e.g. bike lane, shared used path, sidewalk, pedestrian path).
10. The City has the authority, responsibility, and discretion for reviewing, approving, and removing encroachments and if applicable, issuing encroachment permits onto, upon and over the right-of-way of the **ROUTES.** City agrees to review encroachmentsaccording to the terms and conditions established by the City by ordinance or rule and in a manner ensuring any approved encroachment does not interfere with the safe and efficient use of the vehicle travel lanes or the non-motorized travel facilities (e.g. bike lane, shared used path, sidewalk, pedestrian path).
11. The City is responsible for and has control of roadway maintenance of the **ROUTES** as defined in this Agreement, at no cost to MDT.
12. As set forth in Article II, the City is responsible for and has control of maintenance and certain right-of-way feature placement on the **ROUTES**, at no cost to MDT, including but not limited to sidewalks, shared use paths, lighting, landscaping, irrigation features, signs, benches, bikes racks, planters, tree grates, etc.

**ARTICLE V- OBLIGATIONS OF MDT**

1. MDT agrees to request necessary approval or concurrence from the Commission through the course of activities contemplated by this agreement.
2. MDT is responsible for the official system designation of all Commission-designated highway systems and state highways within Montana, including **ROUTES,** and coordinating with FHWA and the Commission to obtain approval for any changes including adding roadways to or removing roadways from the Commission-designated system. System designation is used to determine eligibility for funding under the Federal-aid program and state law.
3. MDT, through the yearly fuel tax allocation process, is responsible for any necessary modifications to Attachment B **ROUTES** List and Attachment C Map to reflect any official City limit boundary changes as provided to MDT by the City.
4. If non-compliant ADA (2011 PROWAG) facilities are installed by the City or City-approved local entity on **ROUTES** after the Agreement execution date, MDT may consider suspension of use of Urban Pavement Preservation funds on **ROUTES** until ADA compliance is restored.
5. MDT agrees to continue to develop, administer, design and construct projects on **ROUTES,** which are 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 City. MDT agrees to ensure all such projects are consistent with and in compliance with:
6. 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;
7. 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);
8. the Manual on Uniform Traffic Control Devices (MUTCD);
9. sound engineering practices; and
10. current standards for appropriate pedestrian facility 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 when pedestrian facilities are included or required.

**ARTICLE VI - 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. Default-Termination-Enforcement

1. Each party must notify the other in writing of any alleged violation or breach of any duty or responsibility set forth this Agreement. Within 60 days of such notice, the responding party must either:

a. Initiate work to correct the violation or breach; or

b. Request a consultation with the other party to jointly review the alleged violation or breach before Default action is initiated.

 2. If the City is found in default of this Agreement, MDT may:

* 1. Initiate steps to recommend to the Commission the identified **ROUTE(S)** and any necessary segments to retain connection of the system be removed from the Commission-designated urban highway system and become solely under the City’s jurisdiction without eligibility for federal funding; or
	2. Perform any necessary repairs and seek compensation from the City for all costs, including Indirect Costs; or
	3. Terminate this Agreement and perform necessary removals of improvements on **ROUTE(S)** and seek compensation from the City for all costs, including Indirect Costs.
1. Invoicing and Indirect Cost (IDC)

1. If MDT incurs any costs resulting from this Agreement after following the procedures set forth in Section B, 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. Invoices will include a charge for MDT’s indirect costs at the then-current state fiscal year rate agreed to by MDT and the Federal Highway Administration (FHWA).

2. Invoices will be sent to:

City Name

Address

3. Payments shall be made to:

Montana Department of Transportation

Attention: Collections

2701 Prospect Avenue

PO Box 201001

Helena, MT 59620-1001

1. Other Agreements superseded – This Agreement supersedes all other Maintenance Agreements, Project-specific Agreements, or other Agreements between the parties, however titled, pertaining to construction and maintenance on the **ROUTES**.
2. The City agrees its jurisdictional and indemnity obligations for City or City approved local entity improved, funded, and administered projects under Article II; the City’s operations and maintenance of the **ROUTES** under Article III; and the City’s indemnity obligation under Article VI will survive the termination or expiration of this Agreement so long as the **ROUTES** remain Commission-designated and maintained by the City.
3. Hold Harmless & Indemnification –

 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 damage to property, bodily or personal injury, or death arising out of the acts or omissions of the City, or its agents, or subcontractors, under this Agreement, except the negligence of MDT.

 MDT 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 damage to property, bodily or personal injury, or death arising out of the acts or omissions of MDT, or its agents, or subcontractors, under this Agreement, except the negligence of the City.

1. Insurance –

1. 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.

2. 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.

3. Workers’ Compensation Insurance: Each party shall maintain and require its contractors and subcontractors to maintain workers’ compensation insurance 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.

4. 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.

H. 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.

I. 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.

J. 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.

K. 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 City non-discrimination ordinances and any applicable non-discrimination regulations required by the State set forth in Attachment “A” attached hereto and made part of this Agreement.

L. 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.

M. 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.

N. Representatives –

1. City’s Representative: The City’s Representative for the purpose of this Agreement shall be the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 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.

2. MDT’s Representative: The MDT Representative for the purpose of this Agreement shall be the District Administrator or the District 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.

O. 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, the Department’s authorized representative has hereunto signed on behalf of the State of Montana, and the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, on behalf of the City, has signed and affixed hereto the seal of the City. This agreement is effective upon signature date below.

**STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION**

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_

 Montana Department of Transportation

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 Approved for Legal Content

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 Approved for Civil Rights

**CITY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_

**ATTACHMENT A**

**MDT Nondiscrimination and Disability Accommodation Notice**