



MONTANA MUNICIPAL INTERLOCAL AUTHORITY
PO Box 6669
Helena MT 59604-6669

RISK MANAGEMENT BULLETIN

Please distribute to all appropriate personnel and post in a conspicuous place.

TO: MMIA City Attorneys

RM Bulletin #07-11

DATE: May 18, 2011

FROM: John Cummings, MBA, PHR

**RE: Sample Sidewalk Contract with the State of Montana /
Montana Department of Transportation (MDOT)**

The City of Helena recently negotiated a contract and/or "draft agreement" with the State of Montana / Montana Department of Transportation (MDOT).

The attached "draft agreement" includes the minimum standards that the Montana Department of Transportation (MDOT) was willing to agree to. As always, your City or Town may be able to negotiate additional specifications.

Hopefully this draft will provide your City or Town with a starting point in these negotiations.

The "draft agreement" is included in this bulletin starting on the next page.



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HELENA CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Montana, acting by and through its Department of Transportation, hereinafter called the State, and the City of Helena, a Montana municipal corporation, hereinafter called the City.

WITNESSETH THAT:

THE PURPOSE OF THIS AGREEMENT IS TO SET FORTH THE RESPONSIBILITIES AND DUTIES OF THE STATE AND THE CITY WITH RESPECT TO A FEDERAL AID HIGHWAY AND ADJACENT PEDESTRIAN FACILITIES PROJECT WITHIN THE CITY OF HELENA, MONTANA.

I. WHEREAS, the State proposes to construct and/or reconstruct a certain highway **AND ADJACENT PEDESTRIAN FACILITIES (SIDEWALKS)** in and through the City, the construction being known as Federal Aid Project No. STPU 5807(12), also known as Cedar Street – Helena; and

WHEREAS, the construction will be over and upon Route U-5807, Cedar Street in the City of Helena, beginning at approximately RP 1.217 (Intersection of Cedar Street and Montana Avenue (U-5809)) and extending easterly approximately 0.794 mi to RP 2.011 (Intersection of Cedar and Washington), also including approximately 255-feet of interchange ramp construction on southbound offramp D-4.; and

WHEREAS, the State desires to receive Federal funds to construct the highway; and

WHEREAS, in accordance with the State's agreement with the Federal Highway Administration (FHWA) of the U. S. Department of Transportation, the State must ensure that certain requirements are met in order for the State to fulfill its obligations to the FHWA and for the project to be eligible for federal funds. Accordingly, the State includes federal requirements, which are among those hereinafter set forth, for this project, and the City agrees to them; and

WHEREAS, this document must be duly executed and on record with the State and FHWA before the work contemplated can be awarded to contract; and

WHEREAS, the City hereby concurs in the designation of the highway which was designated under §60-2-110, MCA; and



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WHEREAS, the City desires to have the construction done, the City deeming it to be a valuable and beneficial consideration.

II. NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

AT STATE EXPENSE, THE STATE AGREES TO DESIGN THE PROJECT, LET IT TO CONTRACT AND ADMINISTER THE CONTRACT FOR CONSTRUCTION AND WILL PERFORM ALL THE REMAINING FUNCTIONS AND DUTIES AND RESPONSIBILITIES SET FORTH HEREIN IN EXCHANGE FOR WHICH THE CITY AGREES THAT UPON COMPLETION OF THE PROJECT, DEEMING THE CONSTRUCTION A GOOD AND VALUABLE CONSIDERATION, IT WILL PERFORM ALL OF THE FUNCTIONS AND DUTIES AND RESPONSIBILITIES SET FORTH IN THIS AGREEMENT. THE DUTIES AND RESPONSIBILITIES OF EACH PARTY TO THIS AGREEMENT ARE LIMITED TO THE PROJECT AREA FROM MONTANA AVENUE EAST TO THE 1-15 INTERCHANGE.

(A) The City agrees to conform in all regards to Chapter 8 of Title 61, MCA, and will not take any action, by enacting an ordinance or otherwise, in contradiction of the traffic laws in Chapter 8 of Title 61, MCA, with specific reference, but not limited to, the following matters:

(1) Installing any signs, signals, or markings not in conformance with the Standards approved by the FHWA pursuant to 23 USC §109(d).

(2) Establishing a speed limit less than twenty-five (25) miles per hour in any urban district on the highway.

(3) Establishing a speed limit of less than thirty-five (35) miles per hour outside an urban district on the highway. The City will modify or alter such established speed limits on the highway after a traffic and engineering investigation is made at the request of the State.

(4) Erecting any markings, sign, signal or traffic control device that will give preference to local routes which intersect with the highway and no sign, signal or traffic control device will be erected or constructed, nor shall the establishment or modification of any speed zone, parking regulation or traffic marking which will affect traffic on the highway be made without express written



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permission of the State, and then only after proper traffic and engineering study indicates that such markings, sign, signal or traffic control device is required.

(5) Erecting any lighting on the highway without express written permission of the State, and then only after proper traffic and engineering study indicates that such lighting devices are required. The plans for such lighting installation shall be approved by the State before erection.

(6) Not requiring the stopping of all traffic at all intersecting streets, alleys and driveways before entering the highway. Where the City considers that such traffic control creates a hazardous situation, it will request a traffic and engineering study by the State. The State, after the study, may authorize express written modifications in the traffic control devices as may be in the public interest from a safety and convenience standpoint.

(7) Prohibiting parallel parking on the highway; and

(8) Allowing stopping, standing or parking of a vehicle in a place prohibited by §61-8-354, MCA.

(9) For lighting projects inside of incorporated municipalities, the cost of operation and maintenance of the lighting shall be paid by the State; however, where an existing lighting district, which is paid for by a city, town or special improvement district, is replaced or upgraded, the city, town or special improvement district shall continue paying the amount of the previous payments toward the cost of operation and maintenance of the new or revised lighting system. If and when the cost of energy or maintenance is raised by the utility company, the city, town or special improvement district shall pay their proportionate share of the rate increase.

(B) The State, after a traffic and engineering investigation of any speed zone, parking regulation or traffic control device, may require the City to modify or remove such existing speed zone, parking regulation or traffic control device upon the highway.

(C) In addition to the specific signs, signals and traffic control devices which may be shown on the plans, further restrictions as to parking, stopping and speed limits are set forth in the attached drawing labeled "Exhibit A," that exhibit being part of this agreement.

(D) The State will retain the authority and responsibility for issuing approach and encroachment permits onto, upon or over right-of-way of the highway by anyone.



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(E) Should the City incorporate beyond the present City limits, and such newly annexed area include portions of this Federal Aid Project not now within the City limits, then this agreement, by reference herein, will also apply to the newly annexed area.

(F) The City has reviewed and approved the plans.

(G) The City will continue to enforce the ordinances, laws and/or regulations necessary and essential for the operation of the improvements as planned.

(H) All signs required to enforce City ordinances shall be maintained by the City.

(I) Sidewalk Maintenance:

(1) Upon completion of and in consideration for the project, and at no additional cost to the State, the City agrees to assume full responsibility for and control of maintenance of the sidewalks bordering the project, except that the department is responsible for the maintenance of sidewalks and pedestrian/bike facilities on bridges, overpasses and related facilities. Specifically, the City will maintain or cause to be maintained the sidewalks adjacent to both sides of Cedar Street from Montana Avenue to Washington Street. The City may, in its discretion, enforce state laws and its local ordinances, if any, to recover all costs associated with its sidewalk maintenance activities from persons or entities who own property adjacent to the sidewalks and/or who receive the benefit of the maintenance performed.

(a) For purposes of this agreement, "Maintenance" means: removal of and/or surface repair of any obstacles or impediment to the safe and efficient use of the sidewalk by pedestrians, including removal of snow and ice, repair of chipped, fractured, or broken walk or curb from any cause including but not limited to frost, landscaping (tree roots), or permitted encroachments.

(b) The City has the authority and responsibility to issue encroachment permits to private parties to allow for the placement or installation of encroachments on the sidewalk within the right of way according to the terms and conditions established by the City by ordinance or rule subject only to insuring that any permit issued does not in any way interfere with the use of the vehicle travel lanes nor with the safe and efficient use of the sidewalk by pedestrians. As an integral part of the responsibility is the authority and duty to remove any unpermitted encroachment.



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(c) The City may by ordinance or resolution establish parking rules and regulations, including installation of metered parking.

(d) The City may by ordinance or regulation impose landscaping and/or sidewalk construction responsibilities on property owners whose property abuts the state facility provided that any new sidewalk construction completed under the City authority on the highway right of way meets or exceeds the specifications and standards of the department including compliance with any state or federal handicapped access laws and regulations.

(e) For purposes of this agreement, "Maintenance" does not mean repair or replacement of any sidewalk segment six feet or more in continuous length which cannot be repaired without complete removal and replacement of the existing walk and subsurface base. Upon notice that a segment of sidewalk must be replaced, the department will take whatever steps necessary to complete the replacement within 120 days, (weather permitting), subject only to the temporary fix referred to in: I(2) below.

(f) In the event of a disagreement as to whether a sidewalk segment can be repaired or must be replaced, the parties agree that the issue will be resolved by agreement by the City Public Works Director or his designee and the Department Maintenance Administrator or his designee. If necessary the Department and Director and the City Manager may be asked to resolve the issue.

(2) The parties agree that they have a joint and mutual interest to build and maintain the sidewalks in a safe manner. To that end there is a joint responsibility to inspect the sidewalks on a periodic basis, at least annually to discover any potential sections that require repair or replacement. Regardless of who identifies an area of potential harm, they shall immediately notify the other party to the agreement and shall jointly take whatever steps necessary to warn the users of the walk until such time as repair or replacement can be completed. In the event replacement is deemed necessary, temporary repairs may be performed until such time as reconstruction can be programmed and completed. In the event replacement or reconstruction is required, the department shall use any eligible state or federal funding to perform the work and upon completion notify the City after which the City once again is responsible for future maintenance.

(3) City agrees that the maintenance responsibility is in effect until the sidewalks are reconstructed as provided in paragraph (e), unless otherwise agreed to by the parties.



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(4) If at any time, the City believes that the useful life of any of these sidewalks has come to an end - i.e., that complete reconstruction of these sidewalks is the most reasonable economic alternative - it shall promptly notify the State in writing of its determination and the engineering basis therefor. Upon receipt of the written notice, the State shall respond in writing within thirty (30) calendar days to the City's determination that complete reconstruction is the most reasonable economic alternative for continued maintenance or repair of a sidewalk. If, after notification, the State agrees that reconstruction of all of the sidewalk is the most reasonable economic alternative, the City's duty to maintain the sidewalk shall terminate. If, after notification, the State disagrees that reconstruction is the most reasonable economic alternative, the State may, within an additional thirty (30) calendar days, obtain another opinion from an independent engineer at State expense. If that engineer determines that reconstruction is the most reasonable economic alternative, the City's duty to maintain the sidewalks shall terminate until the reconstruction is completed or as otherwise agreed to by the parties. In the event of a disagreement as to whether complete reconstruction is the most reasonable economic alternative for continued maintenance or repair of a sidewalk the parties agree that the issue will be resolved by agreement by the City Public Works Director or his designee and the Department Maintenance Administrator or his designee. If necessary, the Department and Director and City Manager may be asked to resolve the issue.

(5) If, during its inspections, the City encounters a condition on the sidewalk that it believes is caused by a design or construction defect or by the negligent act or omission of a State agent or employee, the City will immediately notify the State of the existence and location of the defect and provide the State with a detailed explanation of the engineering basis for its belief that the condition is caused by a design or construction defect or the negligent act or omission of a State agent or employee.

(6) The State agrees to protect, indemnify, defend and save harmless the City against and from all claims, liabilities, demands, causes of action, judgments, and losses (including costs and attorney's fees incurred by the City in the defense thereof) to them arising in favor of or asserted by any person or entity on account of personal injury, death or damage to property arising solely out of, or in connection with, a defect in the State's design or construction of the project (including, but not limited to, a defect in the State's construction or design of the sidewalks bordering the project as described above) or from the negligent or intentional act of department employees that in any way interfere with or damage the maintenance work of the City.

The City agrees to protect, indemnify, defend and save harmless the State and Department of Transportation against and from all claims, liabilities, demands, causes of action, judgments, and losses (including costs and attorney's fees incurred by the State in the defense thereof) to them



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arising in favor of or asserted by any person or entity (including, but not limited to, the City) on account of personal injury, death or damage to property arising, in whole or in part, out of, or in connection with, the maintenance of the subject sidewalks.

(7) This section does not supersede, discharge, or extinguish any prior agreement between the parties, nor will any future agreement between the parties supersede, discharge, or extinguish this agreement, unless by specific reference and in clear terms.

(J) The City will continue adequate engineering capabilities to ensure that a continuing traffic engineering function is carried out on the project.

III. DURING THE PERFORMANCE OF THIS AGREEMENT, THE CITY, 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 City shall comply with all Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations, 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 involved.

(2) Nondiscrimination: The City, with regard to the work performed by it during the Agreement, will 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 City will not participate, either directly or indirectly, in the discrimination prohibited by 49 CFR §21.5.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the City for work to be performed under a subcontract, including procurements of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the City of the City's obligations under this Agreement and the Regulations relative to nondiscrimination.

(4) Information and Reports: City 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 Department or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or



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directives. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City 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 City's noncompliance with the nondiscrimination provisions of this Agreement, Department may impose sanctions as it or the FHWA determines appropriate, including, but not limited to:

(a) withholding payments to the City under the Agreement until the City complies, and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: City 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. City will take such action with respect to any subcontract or procurement as the Department or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event City is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the City may request the Department to enter into the litigation to protect the interests of the State, and, in addition, the City 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, §49-3-207, MCA:

In accordance with §49-3-207, MCA, City 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) City will comply with all regulations relative to implementation of the Americans With Disabilities Act.



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(2) City will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: "City 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 City. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the City."

(3) 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 City (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

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

THE PARTIES UNDERSTAND AND AGREE THAT THE FAILURE OF EITHER PARTY TO PERFORM THE DUTIES AND RESPONSIBILITIES SET FORTH IN THIS AGREEMENT MAY BE DEEMED A MATERIAL BREACH OF THE CONTRACT FOR WHICH ANY AVAILABLE REMEDY PROVIDED BY LAW MAY BE ASSERTED IN THE DISTRICT COURT. IN ANY LEGAL PROCEEDING TO ENFORCE ANY PROVISION OF THIS AGREEMENT OR FOR BREACH OF THIS AGREEMENT, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER ITS COSTS AND ATTORNEY'S FEES.

IN WITNESS WHEREOF, the Department's authorized representative has signed on behalf of the State of Montana, and the City Manager of the City of Helena, on behalf of the City, has signed and affixed hereto the seal of the City.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION



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By _____, 2010
Administrator - Engineering Division

By _____
Approved for Legal Content

ATTEST: CITY OF HELENA

By _____
Debbie Havens, City Clerk

By _____
Ronald J. Alles, City Manager

APPROVED AS TO FORM:

By _____
David L. Nielsen, City Attorney

I, Debbie Havens, City Clerk of the City of Helena, hereby certify that this agreement was regularly adopted by the City Commission at a meeting held on the _____ day of _____, 2010; and that the Commission authorized the City Manager to sign this agreement on behalf of the Commission.

Debbie Havens, City Clerk