

**COUNTY CONTRACT ROUTING FORM**

**\*ALL FIELDS MUST BE FILLED OUT PRIOR TO FINANCE/ATTORNEY APPROVAL**

**\*ALL CONTRACTS MUST BE SIGNED BY OUTSIDE PARTY PRIOR TO ROUTING TO FINANCE OFFICER; UPON FINANCE APPROVAL CONTRACT WILL BE ROUTED TO COUNTY ATTORNEY; UPON COUNTY ATTORNEY APPROVAL CONTRACT WILL BE ROUTED TO THE COMMISSION**

\*CONTRACT NAME: Memorandum of Understanding between Gallatin County and the MT Department of Transportation for the Planning and Construction of the East Gallatin Belgrade Interchange – North IM-MT 90-6(112(299, UPN 5897001 Serving the Gallatin Field Airport

\*BRIEF DESCRIPTION OF CONTRACT: MOU - GC & MDOT for I-90 E. Belgrade Interchange

If this contract amends or is a change/task order to a previous contract, provide original contract #.

\*ORIGINAL CONTRACT #: N/A

\*RESPONSIBLE DEPARTMENT: Commission

\*ACCOUNT #: \_\_\_\_\_

\*CONTRACT AMOUNT: To be addressed in a corresponding "Funding MOU" between all parties. (See §IV.1 and Attachment A.)

\*EFFECTIVE DATE: \_\_\_\_\_

\*EXPIRATION DATE: \_\_\_\_\_

\*DATE SIGNED BY OUTSIDE PARTIES: \_\_\_\_/\_\_\_\_/\_\_\_\_; \_\_\_\_/\_\_\_\_/\_\_\_\_; \_\_\_\_/\_\_\_\_/\_\_\_\_

FINANCE DIR. APPROVED: Edward A. Blaetner DATE: 6/10/08  
No Money set aside in FY 09 Budget

COUNTY ATTORNEY APPROVED: \_\_\_\_\_ DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

DATE SIGNED BY BOARD OF COUNTY COMMISSIONERS: 6/17/08

**CLERK AND RECORDER KEEPS AN ORIGINAL AND WILL ROUTE A COPY OF THE APPROVED CONTRACT TO THE FOLLOWING DEPARTMENTS:**

- ✓ RESPONSIBLE/ORIGINATING DEPARTMENT
- ✓ DEPUTY COUNTY ATTORNEY'S OFFICE – ATTN: HELEN BALDWIN
- ✓ AUDITOR
- ✓ FINANCE DEPT.

~~County Commission needs a copy~~

DATE CLERK AND RECORDER DISBURSED COPIES: \_\_\_\_/\_\_\_\_/\_\_\_\_/\_\_\_\_

**THE RESPONSIBLE/ORIGINATING DEPARTMENT IS REQUIRED TO MAIL COPIES AND/OR DUPLICATE ORIGINALS OF COMPLETED CONTRACTS TO ALL INTERESTED PARTIES.**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN GALLATIN COUNTY AND THE MONTANA DEPARTMENT OF  
TRANSPORTATION FOR THE PLANNING AND CONSTRUCTION OF  
E BELGRADE INTERCHANGE-NORTH  
IM-MT 90-6(112)299, UPN 5897001  
SERVING THE GALLATIN FIELD AIRPORT**

This memorandum of understanding (MOU) by and between Gallatin County (County) and the Montana Department of Transportation (MDT) establishes the roles, responsibilities and commitments relative to the planning, sequencing, costs, administration, design, construction and maintenance responsibilities necessary for the planning and construction of a new Interstate 90 interchange and immediate connections north to the Frontage Road/MT 205 and south to Alaska Road ("Project", as fully defined on Attachment A) to be located in the vicinity of the Gallatin Field Airport:

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, MDT is responsible for administering the Montana Transportation Commission's Policy Statement #13 on additional interchanges (Attachment B), which requires a finding that the economic development benefits which will result from the construction of this interchange warrants investing federal-aid highway funds and state resources for this Project; and

WHEREAS, The County agrees to be responsible for items identified in this MOU and, in accordance with Attachment B, agrees to "sponsor" this Project. Per this Transportation Commission policy, sponsorship by a local government is a prerequisite for a new interchange to be considered. The sponsor must be responsible for preparing feasibility and environmental studies, arranging the financial package for the Project, utility moves, and securing the right-of-way. MDT has assumed responsibility for preparing the design per Section V and Contract Award Administration per Section IX of this MOU; and

WHEREAS, the City, County and the Airport have committed through a July 2007 Interlocal Agreement to construct a new Eastside Bypass connection to Dry Creek Road, an extension of Northern Pacific Street, an extension of Frank Road, and improvements to Alaska Road from I-90 to Valley Center Drive that will further benefit the overall Belgrade area roadway network, but that are not essential for sufficient operation of the interstate; and

WHEREAS, the County has developed, through a qualified traffic engineer, an operational analysis in accordance with state and federal regulations (including

Attachment C - FHWA's Policy on Additional Interchanges to the Interstate System) relative to requesting new access onto the interstate that will be used in the County's preparation of the formal request for access;

WHEREAS, the County has obtained a consultant to perform the environmental review that has demonstrable experience in developing National Environmental Policy Act (NEPA) documents, has experience with socially sensitive issues, and has met with MDT's Environmental Unit and FHWA prior to initiating work to discuss state and federal expectations regarding the environmental process;

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, construction, and long-term maintenance of this Project;

NOW THEREFORE, the parties set forth below the fundamental duties and responsibilities necessary to plan, construct, and maintain this proposed Project.

**I. PLANNING (Compatibility With Planning Documents)**

**A. County:**

1. Will be responsible for assuring that the proposed Project is compatible with the Bozeman/Belgrade urban areas' transportation plans and City and County land use plans.
2. Will provide MDT appropriate planning documents for review and approval to provide an analysis of the Project by MDT in accordance with Attachment B. These planning documents must specifically address issues/problems that will be solved or created for state and local government relative to the operational capacity of the existing and planned roadway networks, impacts on adjacent land use, environmental impacts on neighborhoods, analysis of land development potential relative to the proposed Project, the relationship of the Project to economic development initiatives and the relationship of the Project to other surface transportation modes such as transit and bike/pedestrian.

**B. MDT:**

1. Will provide traffic model information to the County for use in developing planning analyses.
2. Will provide technical support and approve submissions for adequacy and obtain FHWA approvals as necessary.
3. Will obtain Montana Transportation Commission approvals as necessary

**II. ENVIRONMENTAL REVIEW**

**A. County:**

1. Is responsible for the development of documents necessary for compliance with the NEPA, 23 CFR 771, FHWA Technical Advisory T6640.8A; Section



106 of the National Historic Preservation Act (NHPA); Section 4(f) of the US Department of Transportation (DOT) Act; the Montana Environmental Policy Act (MEPA), Title 75, chapter 1, parts 1 through 3, MCA; and all other applicable laws and regulations;

2. Will prepare all necessary permit applications in connection with the actions contemplated in this MOU and will submit all documents and analyses to MDT for advancement to the appropriate regulatory agencies for approvals. Section 106 of the National Historic Preservation Act of 1966 requires that the agency determine whether there are any National Register-listed or eligible properties that could be affected by the proposed Project. If Section 106 clearance is required, the County will provide the cultural resource report to MDT and MDT will obtain actual Section 106 clearance from the State Historic Preservation Office (SHPO).
3. The environmental analysis must:
  - a. Address all social, economic, and environmental concerns (cultural, biological, historical, hazardous materials, environmental justice, etc.)
  - b. Address the overall Project and the incremental phases of the overall Project.
  - c. Include a hazardous waste audit on all anticipated right-of-way acquisitions.
4. Is solely responsible for any mitigations identified during the environmental review process and analysis including but not limited to any necessary clean-up of hazardous material problem sites revealed by the audit, and will identify all mitigations within a summary report.
5. Will hold MDT and FHWA harmless against any claim or requirement to mitigate actions taken by the County within the vicinity of the area to be served by the proposed Project.
6. Will be responsible for any environmental document reevaluation should that become necessary due to timing constraints under NEPA, and is responsible for developing an environmental document of acceptable quality and any necessary re-evaluations.

B. MDT:

1. Will cooperatively work with FHWA to obtain a determination of the necessary level of environmental documentation for compliance with NEPA/MEPA and other applicable federal and state laws.
2. Will review and provide guidance to the County in the development of environmental documents and permit applications and will submit all documents and analyses to the appropriate regulatory agency for approvals.
3. Will support and seek an approval from FHWA after the environmental document meets MDT standards.

C. All Parties:

1. Understand that the decisions made by MDT and FHWA pursuant hereto and the execution of this MOU does not constitute the irretrievable commitment of resources by MDT or the County until all necessary steps are taken with

- regard to any particular decision to comply with NEPA/MEPA and other applicable state and federal laws.
2. Understand that FHWA approval for access constitutes a federal action, and as such, requires that NEPA procedures are completed in advance of this action.
  3. Acknowledge that all phases of the overall Project are linked and must be analyzed comprehensively within the environmental review described within this section.

### **III. REQUEST FOR ACCESS**

#### **A. County:**

1. Is responsible for the preparation of the document requesting Interstate access. This document must include all justifications, documentation, technical analysis, the information compiled in accordance with sections I and II of this MOU and all other information requested for evaluation by federal guidance and regulation and must be approved for sufficiency in meeting these requirements by MDT before submittal for federal approval.
2. Will address any deficiencies identified by FHWA within the submitted request for access.

#### **B. MDT:**

1. Once approved by MDT for sufficiency, will formally submit the request for access to FHWA for consideration.
2. Will provide the County cooperative assistance in addressing any deficiencies in the request identified by FHWA.
3. Will request the Transportation Commission's approval for the access point and Access Control Resolution once MDT has received and agrees there is sufficient documentation to justify the Project.

#### **C. All Parties:**

1. Acknowledge that new or additional access cannot be added onto Montana's Interstate System without prior approval of FHWA, in response to a formal request made by MDT.
2. Acknowledge that final approval of access cannot precede the completion of the NEPA process.
3. Acknowledge that FHWA and MDT may preview and provide conceptual comments on submittals for engineering and operational acceptability as part of the NEPA review process as provided for in Federal Register: February 11, 1998 (Volume 63, Number 28) pages 7045-7047.
4. Acknowledge that the NEPA review and comment is not approval of the access request.

### **IV. FUNDING**

#### **A. General:**

1. The funding roles and responsibilities for the Project will be addressed in a supplemental agreement to be signed by all parties and considered in

conjunction with this MOU. During the project development phases, all parties will continue to refine the Project funding package, and acknowledge that all responsibilities described in this MOU are contingent on the development of a supplemental funding agreement acceptable to all parties.

2. Currently Identified Funding Sources: Subject to obligation limitations and indirect cost recovery rates, this Project is eligible for up to \$8,000,000 of federal funds under SAFETEA-LU Section 1934 – Transportation Improvement project funds, plus local matching funds for development and construction of the Project, and \$10,000,000 of federal funds under the Interstate Maintenance program, plus 8.76% state matching funds (\$960,105), for construction of the Project. The lowest match rate allowed per 23 USC §120 will be applied to the SAFETEA-LU Section 1934 earmark.
3. §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 project's share of MDT's indirect costs as defined by OMB Circular A-87. MDT's current indirect cost rate is 14.06% for fiscal year 2009 (July 1, 2008 to June 30, 2009).

For this Project, MDT billings will include a charge to the County for the indirect costs at the current fiscal year indirect cost rate, which amount will be applied toward the total project contribution of the County. [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.]

4. A portion of the costs for Gallatin County's Environmental Assessment Contract is credited as local match for the Project. This amount is \$268,533 based on costs incurred since federal approval of this matching source.
5. Project estimates will be updated at Project milestones as defined in Attachment D or as more refined estimates become available until Project closeout. All parties and their consultants will meet during the consultant contract scoping process and during each phase defined in Attachment D to exchange Project information, ensure Project is on track, and identify any outstanding issues. All parties must concur on the Project estimates before they can be used within this MOU as a basis for financial responsibility/participation in this Project.

**B. County:**

1. Will transfer non-federal matching funds to MDT for the SAFETEA-LU Section 1934 Transportation Improvement funds, associated indirect costs, and funding for other non-federal/non-state provided costs, within thirty (30) days of MDT billing. MDT will not submit programming requests to FHWA



for individual Project phases until the required local funds for the phase have been transferred to MDT.

2. Agrees to and acknowledges its responsibility for all costs associated with the Project set forth on Attachment A in excess of the \$10,000,000 federal and \$960,105 state match funds, and \$8,000,000 SAFETEA-LU Section 1934 funds.
3. Is responsible for 100% of non-federal aid eligible costs.
  - a. 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. MDT:

1. Consistent with Transportation Commission approval, will allocate up to \$10,000,000 in Interstate Maintenance funds for construction of this Project, with the funds becoming available no earlier than federal fiscal year 2008.
2. Will provide the non-federal match of up to \$960,105 for the \$10,000,000 Interstate Maintenance funds, no earlier than federal fiscal year 2008.
3. Will request Transportation Commission approval to provide state matching funds for any future federal funding secured for this Project
4. Will consider flexible match proposals from the County (i.e. public or private cash, materials, land, services, building or equipment) and determine eligibility for use as non-federal match for the "Project" based on the source and nature of the contribution, valuation and timing of the contribution, impact on MDT cash flow, and final approval by MDT and the FHWA Division Office (pursuant to 23 CFR 710 and 23 USC §323).
5. Will not hold the local parties responsible for repayment of federal-aid funds for preliminary engineering if the Project is not advanced to construction (pursuant to 23 USC §102c).

D. All Parties:

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. Agree and acknowledge that any expenditures of local, state, and federal funds occurring after June 30, 2007 will be subject to an indirect cost rate established annually by MDT and the FHWA through a federally approved indirect cost plan
3. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for User (SAFETEA-LU), Section 1934, Transportation Improvement Projects – Project Number 240; authorizes up to \$8,000,000 for the "*East Belgrade Interchange and connecting roadways*". Actual funding available for expenditure under this section may be reduced due to obligation limitations imposed at the federal level. The terms of this MOU will apply to

the actual obligation amounts made available, which may be less than the full authorization amount.

## **V. PROJECT DESIGN PHASE**

### **A. County:**

1. Will submit, at no cost to MDT, any design material developed during the environmental review phase of this Project for MDT's use in developing final design and construction plans for the Project.
2. Will develop any preliminary design material needed during the environmental process according to standard practices found in MDT Design Project Development Guidelines and MDT Traffic Engineering Manual and in accordance with the recommended alternative as determined in the environmental documents described in the Environmental section of this MOU. These plans must be submitted to MDT in Microstation and Geopak format in accordance with MDT's project contract letting process.
3. Will provide non-federal match funds to MDT within thirty (30) days of billing, for SAFETEA-LU Section 1934 –Transportation Improvement funds used by MDT during the design development phase of this Project and associated indirect costs.

### **B. MDT:**

1. Will develop construction design plans, in accordance with MDT design standards and the environmental process, for the Project using available SAFETEA-LU Section 1934 -Transportation Improvement project funds.
2. Will provide the County a design phase cost estimate including indirect costs to cover MDT administrative expenses and request for non-federal match funds for the SAFETEA-LU Section 1934 – Transportation Improvement Project funds prior to MDT initiating design phase activities.

## **VI. PROJECT CONSTRUCTION PHASE**

### **A. County:**

1. Acknowledges new interchanges must serve a transportation purpose and safely connect to appropriate components of the road and street network and agrees to submit a separate funding plan that will be included in a stand-alone funding agreement.
  - a. This funding plan must demonstrate that all components of the Project will be completed and operational consistent with the recommendations of the environmental documents described in the Environmental section of this MOU.
  - b. This funding plan must address right-of-way acquisition and utility relocations for the entire Project.
2. Acknowledges that FHWA construction phase approval is contingent on an acceptable and comprehensive funding plan for the completed Project.
3. 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 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. Donated right-of-way for the Project can be used in lieu of non-federal match, but will be valued by the MDT as consistent with state and federal requirements.
- b. If donated right-of-way becomes a part of the overall Project funding package, a separate agreement will cover transfer of ownership, quality of deed and valuation. Any issues will be resolved based on MDT requirements including that valuation, donation, and/or acquisition will precede construction advertisement of the Project.
4. Acknowledges that the value of quantifiable materials and other MDT and FHWA approved in-kind contributions can also be credited 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.
5. Will prioritize Secondary 205 between Bozeman and Belgrade as its next Secondary Program priority (following current priority of Valley Center Road).
6. Has formally committed to implementing land-use decisions through the 2030 planning horizon consistent with the assumptions used in the travel demand modeling analysis of the interchange as part of the operational analysis (traffic impact study).

B. MDT:

1. Will contribute up to \$10,000,000 of federal Interstate Maintenance funds plus 8.76% state matching funds (\$960,105) to the construction phase of the proposed Project based on the Transportation Commission November 1, 2005 approval (Agenda Items #9 and #13), conditions outlined under "C. All Parties, Item I" of this section below.
2. Will program any remaining SAFETEA-LU Section 1934 – Transportation Improvement project funds, after fully funding project development costs associated with this Project and receipt of local funds necessary to complete the funding package for construction and construction engineering, to the construction phase.

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, including contingencies and overruns, is in place to MDT's satisfaction and confirmed through a separate funding agreement as previously described in Section IV. Funding A. General 1; and

- b. the County demonstrates prioritization of S-205 between Belgrade and Bozeman as the County's next Secondary program priority; and
- c. the County and City of Belgrade formally commit to implementing land-use decisions through the 2030 planning horizon consistent with the operational analysis (traffic impact study) future land-use forecasts used in the travel demand modeling analysis of the interchange; and
- d. all approvals, clearances and permits are obtained.

## **VII. RIGHT-OF-WAY ACQUISITION**

### **A. County:**

- 1. Is solely responsible to independently acquire all right-of-way needed for the Project. 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, and in accordance with the following:
  - a. The County will acquire, in the name of MDT, a fee simple interest free of encumbrances for all right-of-way necessary for construction and operation of the Project and transfer to MDT all Project right of way, including the agreed-upon access control, before MDT will advertise bids for construction. This service will entail the actual definition of property to be acquired, development and submittal of right of way plans for MDT approval, preparation of legal descriptions, preparation of deeds and the actual appraisal for the right of way provided for each individual property owner.
  - b. Access Control: Full access control will be enacted for a minimum of 300-feet from the north and south terminus of all Interchange Ramps. Access control will be conveyed to MDT by deed.
- 2. Formally notify MDT when ready to begin right-of-way acquisitions so MDT can request federal authorization to proceed.
- 3. Provide MDT certification that all right of way donated or purchased for this Project by the County or other participating parties was acquired in accordance with all applicable federal or state laws and regulations required for federally-funded projects, which may include the provisions of 49 CFR Part 24 (Uniform Relocation Assistance and Real Property Acquisitions Regulations For Federally Assisted Programs), that there was no relocation of individuals or businesses required, and that all structures within the new right of way have been demolished or removed. This certification is required prior to MDT's requesting Federal authorization of the construction phase.

### **B. MDT:**

- 1. In the case of acquiring right-of-way for the Project, MDT will neither initiate nor participate in condemnation of any property interest or exercise of eminent domain.
- 2. On behalf of the County, will request federal authorization to proceed with right-of-way acquisitions upon formal notification from the County.

3. Is responsible for establishing the final determination and approval of appraised values for donated right of way.
4. Acknowledges that any right of way donated toward the Project will 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.

C. All Parties:

1. Valuation of County's right of way acquired for the Project will be determined by a qualified appraiser selected by County and approved by MDT.

**VIII. UTILITIES**

A. County:

1. Is solely responsible for all utility relocations and associated costs in accordance with state and federal requirements.
2. Will certify that all utility moves have been completed prior to MDT requesting federal authorization of the construction phase.

**IX. CONTRACT AWARD ADMINISTRATION**

A. County:

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 MDT within thirty (30) days of billing. No funding for STP-Urban or Secondary projects will be forthcoming until payment is received from the County.
2. If the federal government requires a reimbursement or return of any federal funds because a project doesn't advance due to County's failure to make any scheduled payment, the County agrees that it will reimburse MDT for those federal funds within thirty (30) days of billing.
3. If at bid opening the County concurs in cost increases greater than 10% of MDT's estimate, the County will pay the increased costs within thirty (30) days of MDT's billing. If the County's share of the cost of the awarded project exceeds the amount paid by the County, the County may determine if other eligible federal funds are available and reach an agreement with MDT to allocate those funds to pay the excess. If other federal funds are not available, the County will pay the excess.

B. MDT:

1. Interchange: Once all approvals, clearances and permits are obtained by the County, MDT will provide a detailed breakdown of all estimated project costs and bill the County in advance for construction of the Project, including construction engineering costs, no more than sixty (60) days before bid opening.



2. Once a complete funding package is in place, will advertise, award and administer the construction contract for the Project in accordance with normal MDT procedures, including obtaining concurrence of award from FHWA.
3. Will not let the Project contract without the County's concurrence if the bid price exceeds the available funds or exceeds the engineer's estimate by more than 10%. If the County does not concur, the Project will not be awarded, since the County is also responsible for the cost increase. If the County does concur, the Project will be awarded and the County will be immediately billed for the amount exceeding the initial payment.
4. Will communicate with the County as stated below before approving change orders over \$10,000 or for any amount that would negatively impact a designated County fund balance.
5. Once construction is approved, MDT will assist the County with any issues related to functional classification or systems designation of the new connector roadways north to the Frontage Road/MT 205 and south to Alaska Road according to established procedures and with the concurrence of the local government.

C. All Parties:

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 the County. MDT will inform the County beforehand, and as early as possible, of anything that appears will result in a cost increase, and will discuss the need for any possible change order with the County. But it is agreed that the County does not have the ability to veto or delay, or refuse to pay for, any change orders deemed necessary by MDT

The County'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 County within thirty (30) days of the statement.

Within six (6) months after the project has been finally accepted with the final costs submitted, the MDT will submit a final statement to the County. 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 County for cost overruns, or it will be a check, for overpayment by the County. The County will submit payment to the 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 County is billed for additional funds, MDT will not participate in any future funding agreements with the County until full payment, including interest, is received from the County

Payments to this project will be coordinated through the MDT's Administration Division (to be directed to the MDT's Accounts Receivable Collections Technician and Accounting Systems Operations Supervisor).

Payments to this project will be provided to MDT staff in the form of a check to be deposited and credited to this Project.

**X. MAINTENANCE**

**A. MDT:**

1. Will be responsible for routine and long-term maintenance on the interchange, ramps and structure.
2. Will maintain connector roadways from the interchange north to the Frontage Road/MT 205 and from the interchange south to Alaska Road.

**XI. OTHER**

- A. Governing Law: the laws of the State of Montana will govern this MOU. Venue for litigation will only be in Lewis and Clark County, State of Montana. In case of conflict between the obligation imposed by this MOU and Montana law, then Montana law will control.
- B. Modification and Amendment: This MOU 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.
- C. Complimentary Agreements: The parties of this MOU may enter into separate agreements during the development of the Project. Any such agreements will not supercede this MOU.
- D. Termination: Both the MDT and the County agree to move in an efficient and expeditious manner toward development of the proposed Project. Either party may terminate this MOU, and all obligations hereunder, with 30-day notice in writing to the other party of the intention to do so. This MOU may not be terminated once a contract or contracts have been awarded for construction of the Project.
- E. Liability:

The County will defend, indemnify and hold harmless the State of Montana, including MDT, from any claims, losses, defense costs, attorney's fees, and judgments arising from or resulting from the County's, and the County's consultants', contractors', and subcontractors', negligence, errors or omissions in performing any duty or responsibility arising from this MOU.

The State of Montana, including MDT, will defend, indemnify and hold harmless the County from any claims, losses, defense costs, attorney's fees, and judgments arising from or resulting from MDT's, and MDT's

consultants', contractors', and subcontractors', negligence, errors or omissions in performing any duty or responsibility arising from this MOU.

GALLATIN COUNTY

By:   
Gallatin County Board of Commissioners

ATTEST:


  
Charlotte Mills  
Clerk & Recorder

MONTANA DEPARTMENT OF TRANSPORTATION

By:   
Montana Department of Transportation

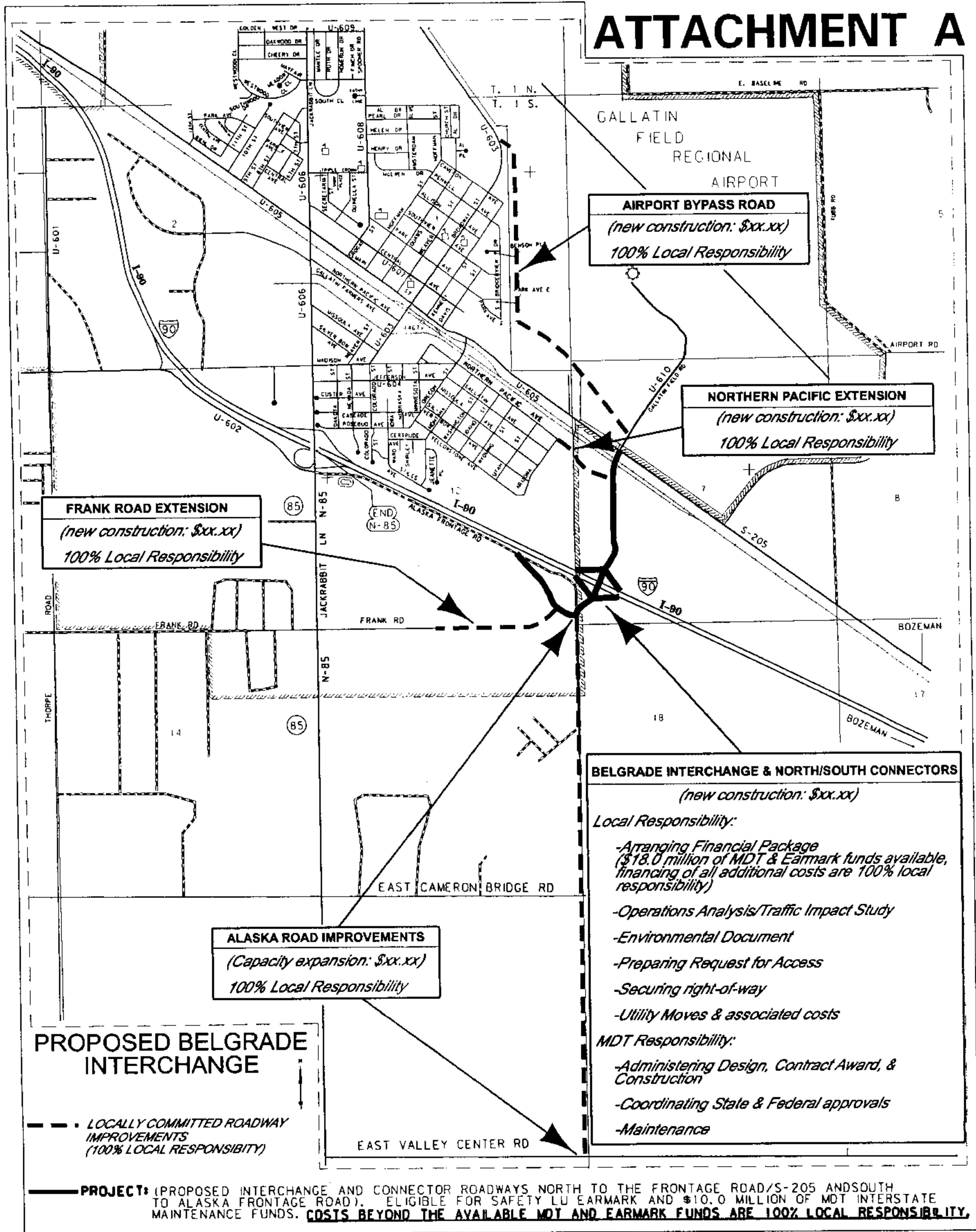
Date: 6/19/2008

  
Approved for Legal Content

  
Approved for Civil Rights Content



# ATTACHMENT A



## ATTACHMENT B

### TRANSPORTATION COMMISSION POLICY STATEMENT #13 - ADDITIONAL INTERCHANGES

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#### MONTANA TRANSPORTATION COMMISSION POLICY STATEMENT

Adopted by the Montana Transportation Commission  
during regular session in June, 1992, Updated February, 1992, Updated November 22,  
2002

Updated July 17, 2003

Policy Number 13

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#### Background

Montana's Interstate was well planned and access that was provided to it at the time of original construction was appropriate for the needs and land use that then existed.

However, over the years the land use and needs did change in some areas, so on June 28, 1984 the Montana Highway Commission adopted a policy which set forth the criteria upon which additional interchanges could be financed with I-4R (Interstate resurfacing, restoration, rehabilitation, and reconstruction) funds.

Based on that policy, the following interchanges were considered:

- South Billings Blvd. At Billings (constructed)
- I-315 at Great Falls (constructed)
- North 19th at Bozeman (constructed)
- Forestvale Road at Helena (alternatives under review as part of I-15 EIS)
- Shiloh Road at Billings (constructed)
- Airport at Missoula (constructed)

Any of these interchange concepts still not constructed will continue based on the June 28, 1984 policy.

#### Discussion

Times are still changing and the highway funding picture for interchanges is tighter. The Intermodal Surface Transportation Efficiency Act of 1991 declared the Interstate completed and eliminated any further Interstate construction funds for new interchanges. In 1998 Transportation Equity Act still allows additional interchanges to be added to the interstate. However, if federal aid transportation funds are to be used to construct interchanges, they must be either IM (Interstate Maintenance) NHS (National Highway System) or STP (Surface Transportation Program) funds. Additional interchanges must therefore compete with other badly needed improvement projects on Montana's arterial and major collector systems. Other categories of funds, such as bridge, may also be eligible depending on the cost benefit of the investment.

The following policy will therefore guide the state's investment in new interchanges.

#### Policy

It is the policy of the Montana Transportation Commission that additional interchanges on Montana's Interstate be considered for addition on the following basis.

To be considered, an interchange proposed by an entity other than the MDT must:

Be physically feasible. It must meet applicable engineering and traffic standards and not be unreasonably expensive.

Be compatible with local planning. It must be compatible with the local transportation improvement program and long-range transportation and land use plans as applicable.

Have a sponsor willing to carry the financial and administrative burden. That sponsor must be a city or county government and would have to carry the ball as far as preparing feasibility and environmental studies, arranging the financing package, preparing the design, securing the right-of-way, and securing the access through the MDT and FHWA reviews and approvals.

And

Have a funding plan compatible with the interchange's intended use. For example, at one extreme, an Interchange proposed to serve and enhance a private development would be financed entirely with private funds. At the other end of the spectrum would be a facility without such private benefit that might be funded from a variety of public sources. Between those extremes could be many different situations and funding plans. For example, an interchange that derives 50% of its benefits from increasing land values in the immediate area, 20% from benefits to through traffic and the other 30% from benefits to local traffic, should have a funding package that would consist of 20% IM or NHS money, 30% STP or city funds, and 50% from a local SID assessing property in the area being benefited.

The Montana Department of Transportation and Montana Transportation Commission sets funding priorities unless:

- 1) There is a positive showing that all needs on the existing NHS and STP program are being met, or
- 2) There is a positive showing that the economic development benefits which will result from construction of a new interchange outweigh the necessity to meet existing needs in No. 1 above.



Note: For purposes of this section “economic development” means the creation of new manufacturing or other non-retail jobs.

If additional interchanges meet the above criteria, the Montana Department of Transportation and the Montana Transportation Commission will consider the following factors in their further analysis of the proposals:

1. Traffic use (both present and future)
2. Cost (P.E., R/W, Construction, and Maintenance)
3. Local and/or private funding support
4. Problems solved for the Department of Transportation (operational, capacity, etc.)
5. Problems created for the Department of Transportation (operational, capacity, etc.)
6. Problems solved for local governments (operational, capacity, etc.)
7. Problems created for local governments (land use, zoning, maintenance, etc.)
8. Social, economic, and environmental impacts
9. Benefit – cost analysis
10. Economic development

Additional interchanges must stand on their own merits and compete with other types of projects for inclusion in the program.

If the MDT identifies the need for an additional interchange, this project will compete with other system needs for funding.

  
Chair, Montana Transportation Commission

## ATTACHMENT C

### ADDITIONAL INTERCHANGES TO THE INTERSTATE SYSTEM

[Federal Register: February 11, 1998 (Volume 63, Number 28)]

[Notices]

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From the Federal Register Online via GPO Access

[DOCID:fr11fe98-120]

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#### DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Additional Interchanges to the Interstate System

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of policy statement.

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**SUMMARY:** This document issues a revision of the FHWA policy statement regarding requests for added access to the existing Interstate system. The policy includes guidance for the justification and documentation needed for requests to add access (interchanges and ramps) to the existing Interstate System. The policy statement was originally issued in the Federal Register on October 22, 1990 (55 FR 42670).

**DATES:** The effective date of this policy is February 11, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Seppo I. Sillan, Federal-Aid and Design Division, Office of Engineering, (202) 366-0312, or Mr. Wilbert Baccus, Office of Chief Counsel, (202) 366-0780, Federal Highway Administration, 400 Seventh Street SW., Washington DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Section 111 of title 23, U.S.C., provides that all agreements between the Secretary and the State highway department for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. The Secretary has delegated the authority to administer 23 U.S.C. 111 to the Federal Highway Administrator pursuant to 49 CFR 1.48(b)(10). A formal policy statement including guidance for justifying and documenting the need for additional access to the existing sections of the Interstate System was published in the Federal Register on October 22, 1990 (55 FR 42670).

The FHWA has adopted the AASHTO publication "A Policy on Design Standards--Interstate System" as its standard for projects on the Interstate System. This publication provides that access to the Interstate System shall be fully controlled by constructing grade separations at selected public crossroads and all railroad crossings. Where interchanges with selected public crossroads are constructed, access control must extend the full length of ramps and terminals on the crossroad.

### **Summary of Changes**

The changes in the policy statement are being made to reflect the planning requirements of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA, Pub. L. 102-240) as implemented in 23 CFR part 450, to clarify coordination between the access request and environmental processes, and to update language at various locations. The following specific revisions are made to the existing policy statement:

1. An additional sentence is added to item 5 under "Policy" that ensures requests for new or revised access are consistent with 23 CFR part 450 and 40 CFR parts 51 and 93.
2. Text in item 5 pertaining to future interchange additions has been moved to item 6 because it covers a different subject.
3. Item 6 is redesignated as item 7.
4. A new item 8 is added so that those reviewing the access request have the information necessary to process the request.
5. The fifth paragraph under "Application" is revised to clarify coordination with the environmental process.

The revised policy statement also includes various editorial changes to enhance clarity and readability. The revised policy statement is as follows:



## Policy

It is in the national interest to maintain the Interstate System to provide the highest level of service in terms of safety and mobility. Adequate control of access is critical to providing such service. Therefore, new or revised access points to the existing Interstate System should meet the following requirements:

1. The existing interchanges and/or local roads and streets in the corridor can neither provide the necessary access nor be improved to satisfactorily accommodate the design-year traffic demands while at the same time providing the access intended by the proposal.
2. All reasonable alternatives for design options, location and transportation system management type improvements (such as ramp metering, mass transit, and HOV facilities) have been assessed and provided for if currently justified, or provisions are included for accommodating such facilities if a future need is identified.
3. The proposed access point does not have a significant adverse impact on the safety and operation of the Interstate facility based on an analysis of current and future traffic. The operational analysis for existing conditions shall, particularly in urbanized areas, include an analysis of sections of Interstate to and including at least the first adjacent existing or proposed interchange on either side. Crossroads and other roads and streets shall be included in the analysis to the extent necessary to assure their ability to collect and distribute traffic to and from the interchange with new or revised access points.
4. The proposed access connects to a public road only and will provide for all traffic movements. Less than "full interchanges" for special purpose access for transit vehicles, for HOV's, or into park and ride lots may be considered on a case-by-case basis. The proposed access will be designed to meet or exceed current standards for Federal-aid projects on the Interstate System.
5. The proposal considers and is consistent with local and regional land use and transportation plans. Prior to final approval, all requests for new or revised access must be consistent with the metropolitan and/or statewide transportation plan, as appropriate, the applicable provisions of 23 CFR part 450 and the transportation conformity requirements of 40 CFR parts 51 and 93.
6. In areas where the potential exists for future multiple interchange additions, all requests for new or revised access are supported by a comprehensive Interstate network study with recommendations that address all proposed and desired access within the context of a long-term plan.
7. The request for a new or revised access generated by new or expanded development demonstrates appropriate coordination between the development and related or otherwise required transportation system improvements.
8. The request for new or revised access contains information relative to the planning requirements and the status of the environmental processing of the proposal.

## **Application**

This policy is applicable to new or revised access points to existing Interstate facilities regardless of the funding of the original construction or regardless of the funding for the new access points. This includes routes incorporated into the Interstate System under the provisions of 23 U.S.C. 139(a) or other legislation.

Routes approved as a future part of the Interstate system under 23 U.S.C. 139(b) represent a special case because they are not yet a part of the Interstate system and the policy contained herein does not apply. However, since the intention to add the route to the Interstate system has been formalized by agreement, any proposed access points, regardless of funding, must be coordinated with the FHWA Division Office. This policy is not applicable to toll roads incorporated into the Interstate System, except for segments where Federal funds have been expended, or where the toll road section has been added to the Interstate System under the provisions of 23 U.S.C. 139(a).

For the purpose of applying this policy, each entrance or exit point, including "locked gate" access, to the mainline is considered to be an access point. For example, a diamond interchange configuration has four access points.

Generally, revised access is considered to be a change in the interchange configuration even though the number of actual points of access may not change. For example, replacing one of the direct ramps of a diamond interchange with a loop, or changing a cloverleaf interchange into a fully directional interchange would be considered revised access for the purpose of applying this policy.

All requests for new or revised access points on completed Interstate highways must be closely coordinated with the planning and environmental processes. The FHWA approval constitutes a Federal action, and as such, requires that the National Environmental Policy Act (NEPA) procedures are followed. The NEPA procedures will be accomplished as part of the normal project development process and as a condition of the access approval. This means the final approval of access cannot precede the completion of the NEPA process. To offer maximum flexibility, however, any proposed access points can be submitted in accordance with the delegation of authority for a determination of engineering and operational acceptability prior to completion of the NEPA process. In this manner, the State highway agency can determine if a proposal is acceptable for inclusion as an alternative in the environmental process. This policy in no way alters the current NEPA implementing procedures as contained in 23 CFR part 771.

Although the justification and documentation procedures described in this policy can be applied to access requests for non-Interstate freeways or other access controlled highways, they are not required. However, applicable Federal rules and regulations, including NEPA procedures, must be followed.

## **Implementation**

The FHWA Division Office will ensure that all requests for new or revised access submitted by the State highway agency for FHWA consideration contain sufficient information to allow the FHWA to independently evaluate the request and ensure that all pertinent factors and alternatives have been appropriately considered. The extent and format of the required justification and documentation should be developed jointly by the State highway agency and the FHWA to accommodate the operations of both agencies, and should also be consistent with the complexity and expected impact of the proposals. For example, information in support of isolated rural interchanges may not need to be as extensive as for a complex or potentially controversial interchange in an urban area. No specific documentation format or content is prescribed by this policy.

## **Policy Statement Impact**

The policy statement, first published in the Federal Register on October 22, 1990 (55 FR 42670), describes the justification and documentation needed for requests to add or revise access to the existing Interstate System. The revisions made by this publication of the policy statement reflect the planning requirements of the ISTEA as implemented in 23 CFR part 450, clarify coordination between the access request and environmental processes, and update language at various locations. The States will have to take these factors into consideration when making future requests for new or revised access points, but the overall effort necessary for developing the request will not be significantly increased.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued: February 4, 1998.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

[FR Doc. 98-3460 Filed 2-10-98; 8:45 am]

BILLING CODE 4910-22-P



## ATTACHMENT D

### PROJECT MILESTONES PRIOR TO CONSTRUCTION

#### **Introduction:**

The following narrative is a general summary of the MDT Consultant Design process. An official, more detailed version, of this process is contained in MDT's Consultant Design Activity Descriptions and The MDT Consultant Design Flowchart (the flowchart). The most current versions of these documents are available upon request from MDT or online at the MDT website: <http://www.mdt.mt.gov/>

#### **1. Survey Phase:**

**A. Alignment and Grade Review (AGR):** This is a meeting with all appropriate engineering disciplines to establish the project's horizontal alignment and vertical alignment (grade). Comments on the road plans, cross sections, and the project estimate are discussed during the office portion of the meeting. After the office plan review, the design team goes out to the project site to review the plans and compare them with the physical features on the ground. The AGR meeting is summarized in an AGR report which gives a detailed description of project design features and decisions that were made at the AGR meeting. The report is distributed throughout MDT and FHWA for review and comment.

Engineering activities leading up to this meeting include preliminary hydraulics report, preliminary geotech and materials report, preliminary bridge layout, preliminary traffic plans, alignment and grade traffic plans, preliminary survey, cadastral survey, preliminary roadway design, roadway alignment plan, preliminary right-of-way.

Environmental Activities leading up to this meeting include cultural resource report, traffic noise report, air quality assessment, Haz Mat/ISA, Biological Resources Report.

**B. Environmental Assessment (EA):** This project involves preparation of an EA. For an EA to be approved, there are a number of steps necessary. First, the preliminary EA needs to address initial internal (MDT, FHWA, local agency) comments. Upon reviewing and incorporating internal comments the EA is signed by MDT and FHWA. The EA then goes out for public review during which formal public meeting is held. After public review, public comments are compiled and addressed in a draft decision document. If FHWA approves the document and issues a Finding of No Significant Impact (FONSI) this marks the completion EA process. If a FONSI is not issued, an Environmental Impact Statement (EIS) may be required.

**C. Scope of Work:** The scope of work combines the results of the Alignment and Grade Report with any developments that come out of the E-doc. The Report identifies the project's preliminary estimated construction cost, outlines all major project design features and sets the anticipated design scope of the project. The E-doc must be approved before the Scope of Work Report can be finalized.

As soon as the Scope of Work Report is finalized, the project moves from the Survey Phase to the design phase.

#### **2. Design Phase:**

**A. Plan-in-Hand (PIH):** The PIH review meeting is the major milestone in the Design Phase. The PIH meeting is similar in format to the Alignment and Grade Meeting described above, but at

this stage the plans and estimate are much further refined. Quantities and Summary Frames are reviewed along with a detailed cost estimate, preliminary right-of-way plans and special provisions. Like the AGR, the PIH review consists of an office review and a field review.

The design activities that lead up to the PIH include the Final Hydraulics Report, Geotech and Materials, Road Plans, Preliminary Right-of-Way plans, Traffic Plans and Preliminary Structure Plans. During this time exceptions to the standard design criteria are identified and a formal design exception request is prepared, if applicable.

After the PIH meeting, the consultant produces the Plan-In-Hand Report. MDT's approval of this report marks the end of the Design Phase.

### **3. Right-of-Way (R/W) Phase:**

**A. R/W Authorization:** Following PIH and review of the preliminary R/W Plans, the consultant incorporates comments and provides R/W plans for MDT to review. After the consultant addresses the R/W plans to MDT's satisfaction, Right-of-Way is "authorized." After right-of-way is authorized, the right-of-way appraisal and negotiation process can start. Note: Per the MOU, The county is solely responsible to independently acquire all right-of-way for the project. Because MDT typically acquires right-of-way, the East Belgrade Interchange project flow may somewhat deviate from what is shown on the flowchart, however MDT will still be involved in the appraisal process and R/W authorization. It is expected that the order of R/W activities will remain similar to that shown on the flowchart.

**B. Final Plan Review:** Following PIH, the consultant will incorporate all comments received and produce Final Design Plans. These plans are reviewed at the Final Plan Review meeting which is typically an office meeting in which the entire plan package is thoroughly reviewed in preparation for transmitting the plans to Contract Plans. After the Final Plan Review, a Final Plan Review Report, including an updated cost estimate is produced and distributed for review and comment.

**C. Transmit to Contract Plans:** The consultant submits the final construction plans after incorporating all changes resulting from the Final Plan Review and Final Structures Review. The plans then go to the Contract Plans Bureau and undergo a quality review process that typically requires additional minor changes prior to the project being let for construction.

## ATTACHMENT E

### NON-DISCRIMINATION NOTICE

During the performance of this Agreement, Gallatin County (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."**
- (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 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.**