



VISION ZERO

zero deaths
zero serious injuries

Montana Department of Transportation

Great Falls District Office
200 Smelter Avenue NE
PO Box 1359
Great Falls MT 59403-1359

Steve Bullock, Governor
Michael T. Tooley, Director

Thursday, September 27, 2018

Gary McDermott, Mayor
City of Shelby
112 1st Street South
Shelby MT 59474

Subject: Construction Agreement
9394000, NH 1-4(48)278, Main Street – Shelby
9396000, STPP 67-1(7)0, Shelby North

I have enclosed two copies of Construction Agreements for upcoming projects in Shelby. Please sign both sets at your earliest possible opportunity. Be certain the City Clerk subscribes her name to the recitation and resolution and places the seal thereon for each agreement. Return both to me and I will return a copy to you upon execution.

If any changes are contemplated to the proposed Agreement, please contact me at (406) 454-5900 before any changes are made. If changes are made to the proposed Agreement without the Department's prior written approval, it will likely result in the Department's non-concurrence to the changes and the project being withdrawn from engineering.

Christie McOmber
Great Falls Projects Engineer
cmcomber@mt.gov

copies: Doug Wilmot, District Administrator-Great Falls

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" or "Department", and the City of Shelby, 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 SHELBY, 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. NH 1-4(48)278, Main Street – Shelby, UPN 9394000, and

WHEREAS, the construction will be over and upon Main Street (N-1) within the Shelby city limits between milepost 278.09 and 280.02, 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 Section 60-2-110, MCA, and

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.

(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 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) 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.

(D) 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.

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

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

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

(H) The City is responsible for costs for any locally-required permits, including but not limited to building permits, electrical permits, plumbing permits, excavation permits, engineering permits, and/or encroachment permits.

(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 State 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 the project within the project limits. 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 the purposes of this agreement, "maintenance of sidewalk" is defined as: surface patching; crack sealing; sweeping; cleaning; washing; replacing small portions of damaged path; removal of snow and ice; repair of chipped, fractured, or broken surface from any cause including but not limited to frost heaving, landscaping, tree roots, or permitted encroachments; removal of debris and other obstructions or impediments to safe pedestrian travel; and any and all other normally accepted maintenance practices.

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

(c) 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 State including compliance with any state or federal handicapped access laws and regulations.

(d) 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 City 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.

(e) 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 or his designee and the Department of Transportation Maintenance Administrator or his designee. If necessary, the Director of the Department of Transportation and the Mayor may be asked to resolve the issue.

(f) If the city fails to service, maintain, repair and pay the cost of operating this Project as described in this agreement, the State, in its sole discretion, may service, maintain, repair and operate the sidewalk and bill the city for such service, maintenance and operation, and the city agrees to pay the State its costs. Service, maintenance repair and operation costs are subject to indirect cost recovery as per Section 17-1-106. MCA.

(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 State 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.

(4) 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.

(5) 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) Storm Water Management

(1) Construction Storm Water General Permit

(a) Upon completion of all physical work associated with construction activity, the parties will inspect the temporary erosion and sediment control measures and devices as part of the Department's final inspection with the Department's contractor. The Department will provide the City with the Storm Water Pollution Prevention Plan (SWPPP) package for City review. Within ten (10) days of receiving the package, the City will provide the Department with an itemized list of any outstanding records or deficiencies associated with the SWPPP. Upon the Department's and City's approval of site conditions and contractor records, the Department will provide the City a Permit Transfer Notification (PTN) form. The City will return the signed PTN form to the Department within ten (10) business days. The Department will forward the completed PTN form and transfer fees to the Montana Department of Environmental Quality (DEQ).

(b) Once DEQ transfers the Construction Storm Water General Permit Authorization, the City will inspect, maintain, and revise the Best Management Practice devices (BMPs) in accordance with DEQ permit requirements until final stabilization is met and permit coverage is terminated.

(c) The Department agrees to pay annual fees associated with permit coverage until termination. To assure payment, the City must forward invoices to the Department's Environmental Services Bureau for payment.

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

(L) Term – This Agreement shall continue until all parties agree to supersede this Agreement within another Agreement.

(M) Hold Harmless & Indemnification – The City shall protect, defend, indemnify, and hold MDT, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgements (include the cost of defense and reasonable attorney fees) arising in favor of or asserted by the City's employees or third parties on account of damage to property, bodily or personal injury, or death arising out of any services performed, act or omission that in any way results from the acts or omissions of the City, or their agents, or subcontractors, under this Agreement, except the negligence of MDT under this Agreement.

MDT shall protect, defend, indemnify, and hold the City, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgements (include the cost of defense and reasonable attorney fees) arising in favor of or asserted by the MDT's employees or third parties on account of damage to property, bodily or personal injury, or death arising out of any services performed, act or omission that in any way results from the acts or omissions of the MDT, or their agents, or subcontractors, under this Agreement, except the negligence of the City under this Agreement.

(N) Insurance - The City shall maintain for the duration of the Agreement at their cost and expense insurance against claims for injuries to persons or damages to property which may arise from or in connection with any act or omission by the City and their agents, employees, representative, assigns or subcontractors. This City's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to the facility and its location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the City's insurance and shall not contribute with it. This insurance shall cover such claims as may be caused by any intentional or negligent act or omission.

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

Each Occurrence	\$1,000,000.00
General Aggregate	\$2,000,000.00
Excess/Umbrella Liability Insurance	\$2,000,000.00

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

(2) Certificates of Insurance: Insurance is to be placed with an insurer with a Best's rating of no less than A-. The Best's rating requirement does not apply to any governmental entity self-insurance or risk-sharing pool insurance coverage. The City must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, changes in status of policy, etc. The State reserves the right to require complete copies of insurance policies at any time.

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

(O) Public Safety - It is agreed, if any repairs to the Project or future City construction projects must be done to prevent a public hazard, the City will immediately protect the area from public access, contact MDT Havre Area Maintenance, and take corrective action to repair the hazard.

(P) Invoicing and Indirect Cost (IDC) – If MDT incurs any costs as a result of a public emergency, as a result of the City not meeting the requirements in this Agreement which necessitates action on MDT's part concerning the maintenance or repair of the City's Project, or future City construction projects, 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.

Section 17-1-106, MCA, 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. MDT's current IDC rate is 10.49% for fiscal year 2019 (July 1, 2018 to June 30, 2019). If the work occurs or extends into fiscal year 2018 or beyond the IDC rate will be charged at the rate agreed to by MDT and the Federal Highway Administration (FHWA).

- i. Invoice will be sent to:
City of Shelby
112 1st Street South

Shelby, MT 59474

- ii. Payments shall be made to:
Montana Department of Transportation
Attention: Collections
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

(Q) 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. In case of conflict between the terms and conditions of this Agreement and the laws of the State of Montana, the laws of the State of Montana shall control.

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

Additionally, MDT requires that any construction resulting from this Agreement must include appropriate pedestrian facilities that meet or exceed current MDT 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.

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 Director of Transportation or his authorized representative has signed on behalf of the State of Montana and the Mayor of the City of Shelby on behalf of the City, has signed and affixed hereto the seal of the City.

DATED this _____ day of _____, 20 .

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

By _____, 20 _____
Administrator - Engineering Division

By _____
Approved for Legal Content

By *M. Wade Cosby*
Approved Civil Rights

CITY OF SHELBY

Sarah Clary

ATTEST:

CITY OF SHELBY

[Signature]
City Clerk

By *[Signature]*
Mayor Gary McDermott

I, _____, Clerk of the City of Shelby hereby certify that the above agreement was regularly adopted by the City Council at a meeting held on the _____ day of _____, 20____; and that the Council authorized the Mayor to sign this agreement on behalf of the Council.

(Signature)

**MDT NONDISCRIMINATION
AND
DISABILITY ACCOMMODATION NOTICE**

Montana Department of Transportation ("MDT") is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter "protected classes") by its employees or anyone with whom MDT does business:

Federal protected classes

Race, color, national origin, sex, sexual orientation, gender identity, age, disability, & Limited English Proficiency

State protected classes

Race, color, national origin, parental/marital status, pregnancy, childbirth, or medical related to pregnancy or childbirth, religion/ creed, social origin or condition, genetic information, sex, sexual orientation, gender identification or expression, national origin, ancestry, age, disability mental or physical, political or religious affiliations or ideas, military service or veteran status

For the duration of this contract/agreement, the PARTY agrees as follows:

(1) Compliance with Regulations: The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Non-discrimination:

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
 - ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
 - iii. Contact information for PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
 - iv. Information on how to request information in alternative accessible formats.
- c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.

(3) Participation by Disadvantaged Business Enterprises (DBEs):

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml
- b. By signing this agreement the PARTY assures that:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

- c. PARTY must include the above assurance in each contract/agreement the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(6) Sanctions for Noncompliance: In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

(7) Pertinent Non-Discrimination Authorities:

During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Federal

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

State

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

(8) Incorporation of Provisions: The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.

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" or "Department", and the City of Shelby, 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 SHELBY, 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. STPP 67-1(7)0, Shelby North, UPN 9396000, and

WHEREAS, the construction will be over and upon the I-15 Business Loop (P-67, Oilfield Avenue) within the Shelby city limits from Main Street (milepost 0) to the I-15 interchange at milepost 0.5, 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 Section 60-2-110, MCA, and

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.

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(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 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) 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.

(D) 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.

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

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

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

(H) The City is responsible for costs for any locally-required permits, including but not limited to building permits, electrical permits, plumbing permits, excavation permits, engineering permits, and/or encroachment permits.

(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 State 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 the project within the project limits. 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 the purposes of this agreement, "maintenance of sidewalk" is defined as: surface patching; crack sealing; sweeping; cleaning; washing; replacing small portions of damaged path; removal of snow and ice; repair of chipped, fractured, or broken surface from any cause including but not limited to frost heaving, landscaping, tree roots, or permitted encroachments; removal of debris and other obstructions or impediments to safe pedestrian travel; and any and all other normally accepted maintenance practices.

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

(c) 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 State including compliance with any state or federal handicapped access laws and regulations.

(d) 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 City 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.

(e) 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 or his designee and the Department of Transportation Maintenance Administrator or his designee. If necessary, the Director of the Department of Transportation and the Mayor may be asked to resolve the issue.

(f) If the city fails to service, maintain, repair and pay the cost of operating this Project as described in this agreement, the State, in its sole discretion, may service, maintain, repair and operate the sidewalk and bill the city for such service, maintenance and operation, and the city agrees to pay the State its costs. Service, maintenance repair and operation costs are subject to indirect cost recovery as per Section 17-1-106. MCA.

(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 State 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.

(4) 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.

(5) 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) Storm Water Management

(1) Construction Storm Water General Permit

(a) Upon completion of all physical work associated with construction activity, the parties will inspect the temporary erosion and sediment control measures and devices as part of the Department's final inspection with the Department's contractor. The Department will provide the City with the Storm Water Pollution Prevention Plan (SWPPP) package for City review. Within ten (10) days of receiving the package, the City will provide the Department with an itemized list of any outstanding records or deficiencies associated with the SWPPP. Upon the Department's and City's approval of site conditions and contractor records, the Department will provide the City a Permit Transfer Notification (PTN) form. The City will return the signed PTN form to the Department within ten (10) business days. The Department will forward the completed PTN form and transfer fees to the Montana Department of Environmental Quality (DEQ).

(b) Once DEQ transfers the Construction Storm Water General Permit Authorization, the City will inspect, maintain, and revise the Best Management Practice devices (BMPs) in accordance with DEQ permit requirements until final stabilization is met and permit coverage is terminated.

(c) The Department agrees to pay annual fees associated with permit coverage until termination. To assure payment, the City must forward invoices to the Department's Environmental Services Bureau for payment.

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

(L) Term – This Agreement shall continue until all parties agree to supersede this Agreement within another Agreement.

(M) Hold Harmless & Indemnification – The City shall protect, defend, indemnify, and hold MDT, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgements (include the cost of defense and reasonable attorney fees) arising in favor of or asserted by the City's employees or third parties on account of damage to property, bodily or personal injury, or death arising out of any services performed, act or omission that in any way results from the acts or omissions of the City, or their agents, or subcontractors, under this Agreement, except the negligence of MDT under this Agreement.

MDT shall protect, defend, indemnify, and hold the City, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgements (include the cost of defense and reasonable attorney fees) arising in favor of or asserted by the MDT's employees or third parties on account of damage to property, bodily or personal injury, or death arising out of any services performed, act or omission that in any way results from the acts or omissions of the MDT, or their agents, or subcontractors, under this Agreement, except the negligence of the City under this Agreement.

(N) Insurance - The City shall maintain for the duration of the Agreement at their cost and expense insurance against claims for injuries to persons or damages to property which may arise from or in connection with any act or omission by the City and their agents, employees, representative, assigns or subcontractors. This City's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to the facility and its location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the City's insurance and shall not contribute with it. This insurance shall cover such claims as may be caused by any intentional or negligent act or omission.

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

Each Occurrence	\$1,000,000.00
General Aggregate	\$2,000,000.00
Excess/Umbrella Liability Insurance	\$2,000,000.00

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

(2) Certificates of Insurance: Insurance is to be placed with an insurer with a Best's rating of no less than A-. The Best's rating requirement does not apply to any governmental entity self-insurance or risk-sharing pool insurance coverage. The City must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, changes in status of policy, etc. The State reserves the right to require complete copies of insurance policies at any time.

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

(O) Public Safety - It is agreed, if any repairs to the Project or future City construction projects must be done to prevent a public hazard, the City will immediately protect the area from public access, contact MDT Havre Area Maintenance, and take corrective action to repair the hazard.

(P) Invoicing and Indirect Cost (IDC) – If MDT incurs any costs as a result of a public emergency, as a result of the City not meeting the requirements in this Agreement which necessitates action on MDT's part concerning the maintenance or repair of the City's Project, or future City construction projects, 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.

Section 17-1-106, MCA, 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. MDT's current IDC rate is 10.49% for fiscal year 2019 (July 1, 2018 to June 30, 2019). If the work occurs or extends into fiscal year 2018 or beyond the IDC rate will be charged at the rate agreed to by MDT and the Federal Highway Administration (FHWA).

- i. Invoice will be sent to:
City of Shelby

112 1st Street South
Shelby, MT 59474

- ii. Payments shall be made to:
Montana Department of Transportation
Attention: Collections
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

(Q) 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. In case of conflict between the terms and conditions of this Agreement and the laws of the State of Montana, the laws of the State of Montana shall control.

III. The CITY, for itself, its assignees and successors in interest, agrees to comply with the provisions of Exhibit A, “MDT Nondiscrimination and Disability Accommodation Notice,” which is attached hereto and incorporated by reference. The CITY is referred to as the “PARTY” in said Exhibit, and the City’s duties and responsibilities are those duties and responsibilities of the “PARTY.”

Additionally, MDT requires that any construction resulting from this Agreement must include appropriate pedestrian facilities that meet or exceed current MDT 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.

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.

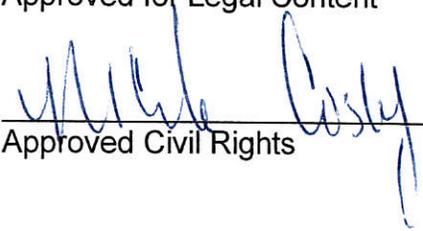
IN WITNESS WHEREOF, the Director of Transportation or his authorized representative has signed on behalf of the State of Montana and the Mayor of the City of Shelby on behalf of the City, has signed and affixed hereto the seal of the City.

DATED this _____ day of _____, 20 .

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

By _____, 20 ____
Administrator - Engineering Division

By _____
Approved for Legal Content

By 
Approved Civil Rights

CITY OF SHELBY


ATTEST: _____ CITY OF SHELBY


City Clerk

By 
Mayor Gary McDermott

I, _____, Clerk of the City of Shelby hereby certify that the above agreement was regularly adopted by the City Council at a meeting held on the _____ day of _____, 20____; and that the Council authorized the Mayor to sign this agreement on behalf of the Council.

(Signature)

**MDT NONDISCRIMINATION
AND
DISABILITY ACCOMMODATION NOTICE**

Montana Department of Transportation ("MDT") is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter "protected classes") by its employees or anyone with whom MDT does business:

Federal protected classes

Race, color, national origin, sex, sexual orientation, gender identity, age, disability, & Limited English Proficiency

State protected classes

Race, color, national origin, parental/marital status, pregnancy, childbirth, or medical related to pregnancy or childbirth, religion/ creed, social origin or condition, genetic information, sex, sexual orientation, gender identification or expression, national origin, ancestry, age, disability mental or physical, political or religious affiliations or ideas, military service or veteran status

For the duration of this contract/agreement, the PARTY agrees as follows:

(1) Compliance with Regulations: The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Non-discrimination:

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
 - ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
 - iii. Contact information for PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
 - iv. Information on how to request information in alternative accessible formats.
- c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.

(3) Participation by Disadvantaged Business Enterprises (DBEs):

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml
- b. By signing this agreement the PARTY assures that:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

- c. PARTY must include the above assurance in each contract/agreement the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(6) Sanctions for Noncompliance: In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

(7) Pertinent Non-Discrimination Authorities:

During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statues and authorities; including but not limited to:

Federal

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

State

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

(8) Incorporation of Provisions: The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.

Tammy Pederson

From: Shelby Fire Department <shelfire@3rivers.net>
Sent: Friday, December 14, 2018 2:07 PM
To: Tammy Pederson
Subject: RE: 2019 OFFICERS

New elected Officers for 2019, Todd Howell chief, Ben Widhalm Asst. Chief, Captain Justin Nelson, Lieutenants, John Postma and Robbie Delacey

From: Tammy Pederson <tammy@shelbymt.com>
Sent: Tuesday, December 11, 2018 4:41 PM
To: shelfire@3rivers.net
Subject: 2019 OFFICERS

Can we also get a listing of new officers to put in the council packets tomorrow or Thursday morning?

Thanks.

Tammy

CITY OF SHELBY

112 First Street South
Shelby, MT 59474
Telephone: (406) 434-5222
FAX: (406) 434-2039
www.shelbymt.com



Mayor: Gary McDermott
Council: Luke Casey, Deb Clark, Aaron Heaton,
Lyle Kimmet, Bill Moritz, Trent Tustian
Animal Control: Mark Warila
Attorney: William E. Hunt, Jr.
Building Inspector: Rob Tasker
Community Development: Lorette Carter
Finance Officer: Jade Goroski
Judge: Joe Rapkoch
Superintendent: Loren Skartved

December 17, 2018

Becky Anseth, Infrastructure Manager
Community Development Division
Department of Commerce
301 S. Park Ave.
P.O. Box 200523
Helena, MT 59620

Re: Shelby Wellfield Project ~ Scope Revision

Dear Becky,

The City of Shelby would like to propose the following scope of work for the wellfield project. The attached spreadsheet indicates the original scope of work and priority items as listed below. Also included is the current funding package for your review.

The project will include design, bidding, construction, contingency, permitting/applications, and Resident Project Representative (RPR) for the following scope items:

a). **Wellfield Pump Houses and Collection System** includes a geotechnical investigation, designing, preparing plans and specifications, and obtaining DEQ approval for the construction of the following:

- Slab and foundation necessary for the installation of the pre-built pump houses for Wells NO. 9-12,
- The process piping, individual meters, and electrical requirements inside each pre-built pump house,
- The new pipe connecting Wells No. 4 and No. 9-12 to the 12" well field transmission main with appropriately sized pipe buried below frost depth,
- Evaluation of options to increase pump size for wells 9-12 and confirmation that this won't have an adverse effect on the aquifer or cause pumping below the screens.
- Pump sizing, controls and specifications for well No. 9-12 if Owner elects pump replacement.
- Individual flow meters at Wells No. 1-6 and No. 9-12 and No. 13 to monitor the water pumped from the well field.
- Individual well access ports to all the existing and new wells.

b.) **Shelby Heights Booster SCADA Improvements** includes designing, preparing the plans and specifications, and obtaining DEQ approval if necessary for construction of the following:

- Replace the existing SCADA system with MicroCOMM
- Evaluate inclusion of controls to make the pumps experience a softer start. KLJ will write performance specifications to upgrade the controls to match the controls on the rest of the water system.

c.) **Water Treatment Improvements** includes designing, preparing the plans and specifications and obtaining DEQ approval for the construction of the following:

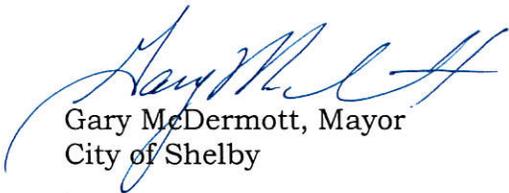
- Replacing Reactor No. 1 with new Trojan UV 4-bulb unit.
- New UVT analyzer that reads both reactors,
- New backup chlorination system in the UV building,
- Provide ability to chlorinate line south of the UV building.

d.) **Wells No. 1, 2,4 and 6 Rehabilitation and/or Replacement** includes investigating options for rehabilitating the existing wells to lower the top of the screen (for wells 1 and 4) below the pumping water level, designing, preparing the plans and specifications, and obtaining DEQ approval for construction of the following:

- Investigate options for Wells 1 and 4 rehabilitation to lower the level of the screen below the pumping water level, including reuse of the Well 4 pump.
- Present Owner with alternatives for rehabilitation versus drilling a band new well,
- Design the chosen alternative from the feasibility study,
- Design new public water supply nears Wells 2 and 6,
- Apply to the Montana DNRC for Well Replacement Water Right,
- Reconnecting processing piping and controls,
- Connect replacement Well 6 to collection system,
- Abandon existing wells 1,2,4 and 6 if necessary,
- Drill up to 2 test wells to optimize a location for the Well 6 replacement,
- Provide security fence for new wells.

We sincerely appreciate your cooperation and collaboration in completing these critical wellfield water improvements for the community and region.

Sincerely,



Gary McDermott, Mayor
City of Shelby

Cc: Shelby City Council
KLJ Engineering

TSEP application scope items	Included in revised scope	Notes
1. Winterize wells 9-12 and metering	Yes	The revised scope includes all the elements of the original application and adds a wellfield collection system that will provide better efficiency and increased pump life for wells 9-12. It also will collect the water pumped from the new well 6.
2. Upgrade the existing water treatment system and generator	Yes	The treatment component of this scope item has been changed to install a new reactor instead of upgrading the existing. The new reactor provides better treatment, increased capacity, and will have a much longer service life. The generator has been removed from the scope to save costs for higher priority items.
3. Shelby Heights booster improvements and generator	Yes	This scope item has been slightly revised by removing the new pumps and the generator. The new scope will upgrade the telemetry and provide softer starts for the existing pumps. This will increase their service life and provide the City with advanced telemetry that matches their other systems.
4. Re-route the south tank water main	No	Rerouting the water main was removed because it would not help to increase the supply or treatment capacity of the system. The revised scope emphasizes increased capacity and places those projects as a higher priority. The City is evaluating other ways to accomplish this scope.
5. Clear Well booster station generator	No	The Clear Well booster station generator was removed because the regional water users that will be connected to the Shelby system will have their own tanks and cisterns, which will provide a buffer in the event of power loss.
6. Rehabilitate the 16" water main	No	This water main was removed from the scope because it does not contribute to additional capacity for the system. The City is evaluating other ways to accomplish this scope.
7. Acid treat water wells	No	Acid treatment of wells 1, 2, 4, and 6 is not necessary under the revised scope because those wells will be replaced with new wells.

Completed by: Lorette Carter

For: City of Shelby Water Wellfield Improvement Project

Date: September 25, 2018

ADMINISTRATIVE and FINANCIAL COSTS:	SOURCE: <i>TSEP</i>	SOURCE: <i>DNRC</i>	SOURCE: <i>CITY</i>	SOURCE:	SOURCE:	TOTAL
Personnel Costs						0.00
Office Costs						0.00
Grant & Loan Administration Services						0.00
Legal Costs						0.0
Audit Fees			1,500.00			1,500.00
Travel & Training						0.00
Loan Fees						0.00
Loan Reserves						0.00
Interim Interest						0.00
Bond Counsel and Related Costs						0.00
TOTAL ADMINISTRATIVE/FINANCIAL COSTS	0.00	0.00	1,500.00			1,500.00
ACTIVITY COSTS:						
Land Acquisition						0.00
Engineering – Basic Services		124,437.50				124,437.50
Engineering – Resident Project Representative Services		150,000.00				150,000.00
Engineering - Additional Services						0.00
Construction	590,144.02	475,562.50				1,065,706.52
Contingency	159,855.98					159,855.98
TOTAL ACTIVITY COSTS	750,000.00	750,000.00				1,500,000.00
TOTAL PROJECT COSTS	750,000.00	750,000.00	1,500.00			1,501,500.00

CITY OF SHELBY

112 First Street South
Shelby, MT 59474
Telephone: (406) 434-5222
FAX: (406) 434-2039
www.shelbymt.com



Mayor: Gary McDermott
Council: Luke Casey, Deb Clark, Aaron Heaton,
Lyle Kimmert, Bill Moritz, Trent Tustian
Animal Control: Mark Warila
Attorney: William E. Hunt, Jr.
Building Inspector: Rob Tasker
Community Development: Lorette Carter
Finance Officer: Jade Goroski
Judge: Joe Rapkoch
Superintendent: Loren Skartved

January 3, 2019

Montana Board of Crime Control
5 so. Last Chance Gulch
P.O. Box 201408
Helena, MT 59620-1408

Re: City of Shelby/Toole County Victim Advocate Program

Dear Board of Crime Control;

I am writing on behalf of the City of Shelby in support of the City of Shelby/Toole County Victim Advocate Program. With your generous support, we were able to institute a victim advocate program in Shelby and Toole County. The results have been impressive in the number of cases the office is handling. The program is helping the city and county attorney offices in providing essential information in regard to victim services and resources available. It is working with local law enforcement to ensure cooperation of victims in cases and most important, lifting up those in most need.

I sincerely hope you will consider the financial struggles of the City of Shelby and Toole County in asking for assistance for this program and consider the tremendous commitment of manpower and volunteer assistance.

We thank you again for your partnership in providing this critical service to the people of Shelby and Toole County.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gary McDermott".

Gary McDermott, Mayor
City of Shelby

Cc: Shelby City Council

**Summary of Port of Northern Montana board meeting
January 3, 2019
Lorette Carter**

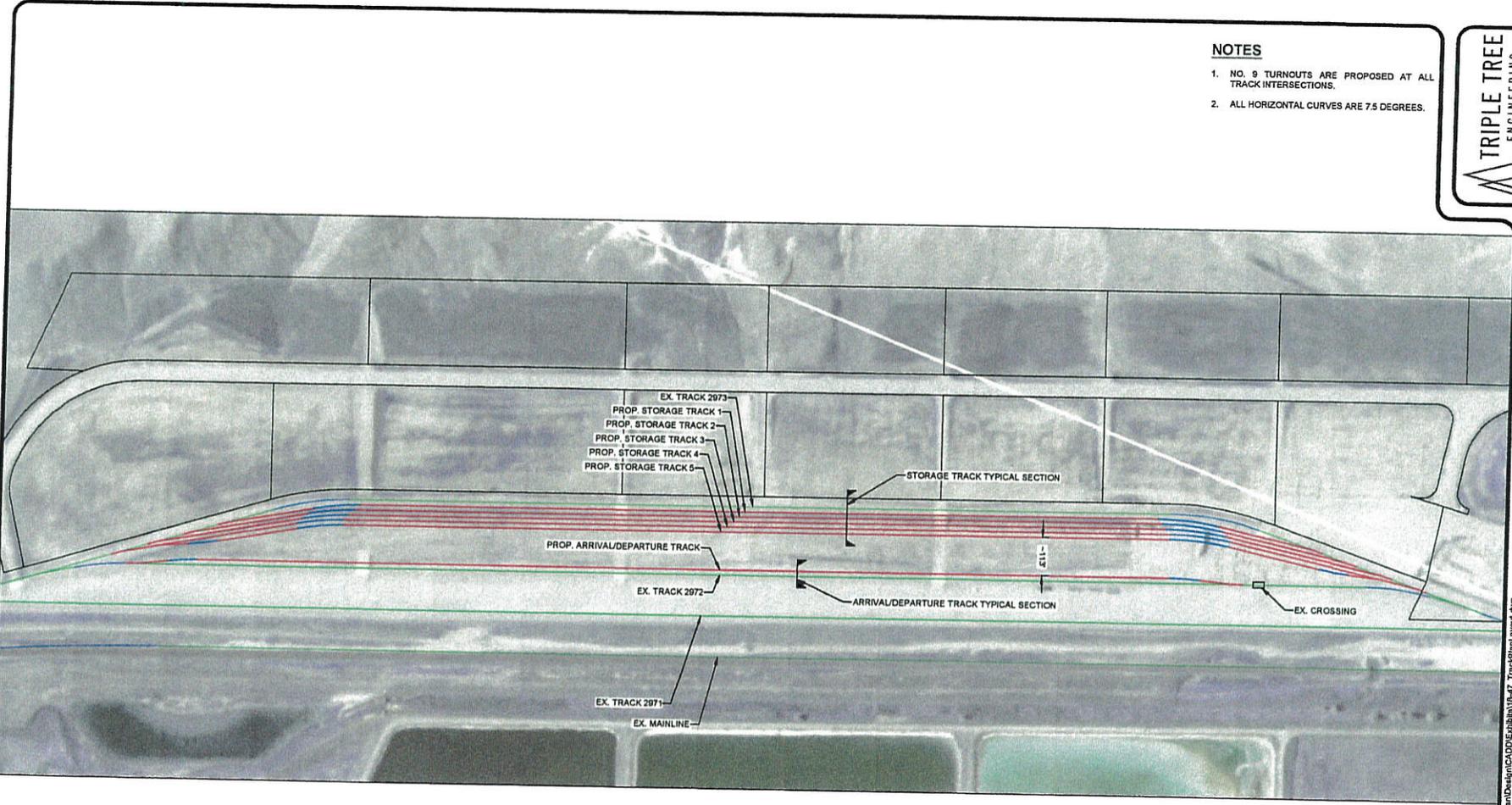
1. **Railcar Count:** The current railcar count in the facility is 75 Calumet cars.
2. **Commercial Lynks:** Commercial Lynks has made a down payment on Parcel 6 of the multi-modal facility. They anticipate completion of the lease/sale documents in January with construction to begin later in 2019.
2. **Calumet Lubricants, Co.:** Calumet continues work with Savage Services in the transloading of iso-octane. Volume is currently down.
3. **Hinrich's Trading Company:** Facilities are operational.
4. **Pat's Off-Road, Inc.:** Pat's has ordered tanks in anticipation of spring construction. These tanks would be transfer tanks as part of their transloading operation.
5. **Savage Services Inc.:** Savage has approved the short-term operational agreement. They are currently working with the Port to finalize the agreement. Savage will also be moving forward with services to pick up oil at wellheads for transloading. Additional storage tracks within the multi-modal facility will be key in developing this opportunity for oil/gas producers in our region.
6. **Pacific Steel & Recycling:** Pacific is ironing out logistics within their yard, moving materials in and out of the facility.
7. **Data Center Feasibility:** Mega Watts Consultants have been in the area completing due diligence on potential siting of a data center.
8. **Dick Irvin Incorporated:** DII is working with the Port Authority to purchase Parcel 4 within the multi-modal facility.
8. **Other:**
 - a. Attached, please find preliminary drawings for additional storage tracks within the facility. The intent is to free track for transloading operations and create storage tracks within the facility for current operations.
 - b. A second subdivision request is currently under review with DEQ. This would give municipal exemption for the remaining parcels within the multi-modal facility.

NOTES

1. NO. 9 TURNOUTS ARE PROPOSED AT ALL TRACK INTERSECTIONS.
2. ALL HORIZONTAL CURVES ARE 7.5 DEGREES.



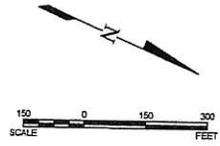
REVISIONS	DATE	DESCRIPTION



PNNMH FACILITY EXPANSION PLAN
 PORT OF NORTHERN MONTANA
 SHELBY, MT

TRACK LAYOUTS

PRELIMINARY
 NOT FOR
 CONSTRUCTION



Nov 21, 2018 - 12:52pm - P:\Shelby\18-47 PNMEP Master Plan\Design\CADD\Exhibits\18-47_TrackPlanLayout.dwg

PROJECT #	18-47
DRAWN BY	SP
CHECKED BY	BHK
DATE	11/21/2018

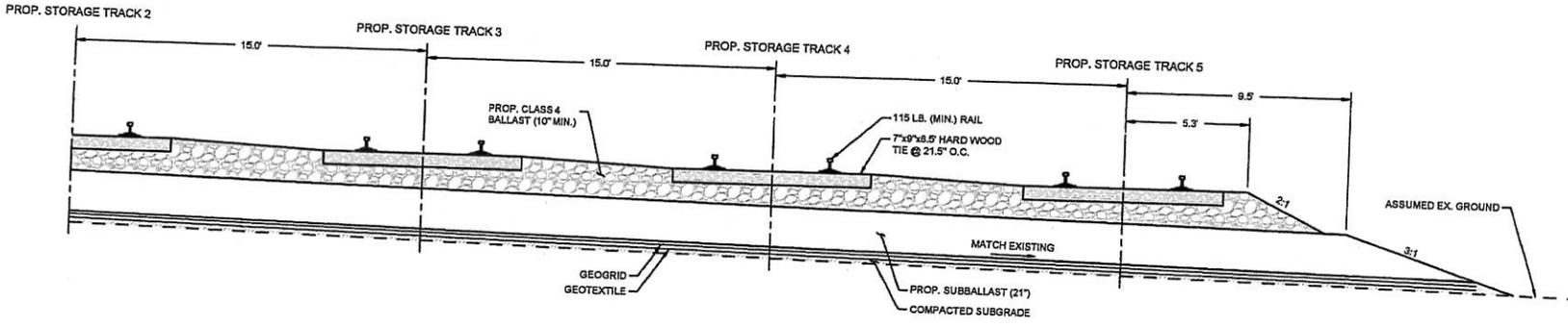
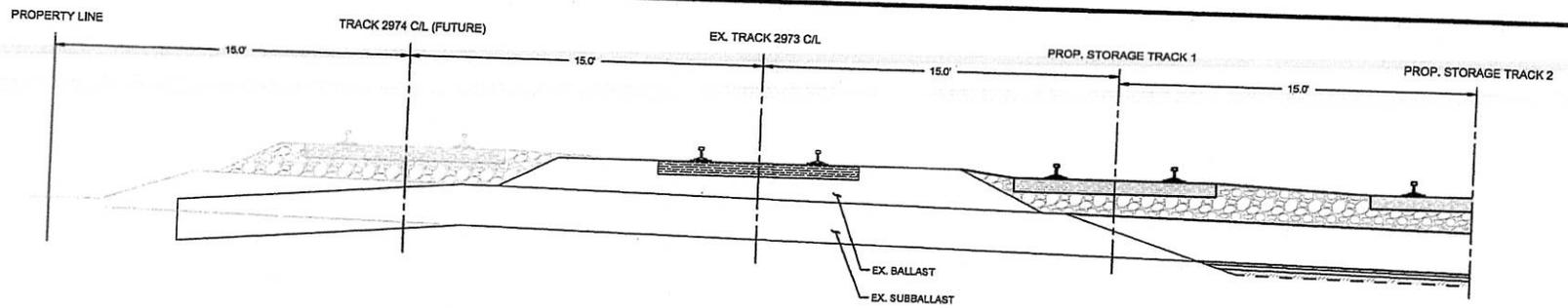
REVISIONS	DATE	DESCRIPTION

PNMMH FACILITY EXPANSION PLAN
PORT OF NORTHERN MONTANA
SHELBY, MT

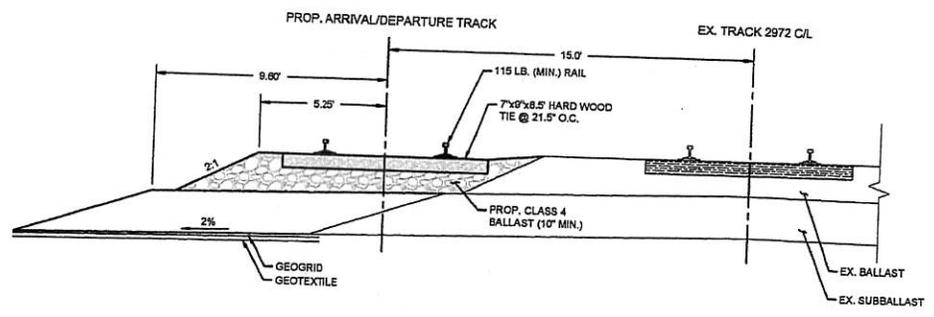
TYPICAL SECTIONS

PROJECT #:	18-47
DRAWN BY:	SP
CHECKED BY:	BK
DATE:	11/02/2018
SHEET:	2

PRELIMINARY
NOT FOR
CONSTRUCTION



TYPICAL SECTION - STORAGE TRACKS



TYPICAL SECTION - ARRIVAL/DEPARTURE TRACK

City of Shelby 2019

Key: Pay Period End Date 

Paydays 

Holidays 

Council Meetings 

January

S	M	T	W	T	F	S
			2	3	4	
6	7	8			11	12
13	14	15	16	17	18	
20			23		25	26
27	28	29	30	31		

February

S	M	T	W	T	F	S
					1	
3		5	6		8	9
10	11	12	13	14	15	
17			20		22	23
24	25	26	27	28		

March

S	M	T	W	T	F	S
					1	
3		5	6		8	9
10	11	12	13	14	15	
17		19	20		22	23
24	25	26	27	28	29	
31						

April

S	M	T	W	T	F	S
		2	3		5	6
7	8	9	10	11	12	
14		16	17		19	20
21	22	23	24	25	26	
28	29	30				

May

S	M	T	W	T	F	S
			1		3	4
5		7	8	9	10	
12	13	14	15		17	18
19		21	22	23	24	
26		28	29		31	

June

S	M	T	W	T	F	S
						1
2		4	5	6	7	
9	10	11	12		14	15
16		18	19	20	21	
23	24	25	26		28	29
30						

July

S	M	T	W	T	F	S
		2	3		5	
7	8	9	10		12	13
14		16	17	18	19	
21	22	23	24		26	27
28	29	30	31			

August

S	M	T	W	T	F	S
				1	2	
4		6	7		9	10
11	12	13	14	15	16	
18		20	21		23	24
25	26	27	28	29	30	

September

S	M	T	W	T	F	S
1			4		6	7
8	9	10	11	12	13	
15		17	18		20	21
22	23	24	25	26	27	
29	30					

October

S	M	T	W	T	F	S
			1	2	3	4
6		8	9	10	11	
13		15	16		18	19
20		22	23	24	25	
27	28	29	30			

November

S	M	T	W	T	F	S
					1	2
3		4	5	6	7	8
10		12	13		15	16
17		19	20	21	22	
24	25	26			29	30

December

S	M	T	W	T	F	S
1		3	4	5	6	
8	9	10	11		13	14
15		17	18	19	20	
22	23	24			27	28
29	30	31				