

Montana Transportation Commission

**June 25, 2020 Meeting
Commission Room
2701 Prospect Avenue
Helena, Montana**

IN ATTENDANCE

Barb Skelton, Transportation Commission Chair
Greg Jergeson, Transportation Commissioner
Noel Sansaver, Transportation Commissioner
Mike Hope, Transportation Commissioner
Tammi Fisher, Transportation Commissioner (via Skype)
Mike Hope, Transportation Commissioner
Mike Tooley, Director MDT
Pat Wise, Deputy Director MDT
Dwane Kailey, MDT
Kevin Christensen, MDT
Lori Ryan, Commission Secretary
Dustin Rouse, MDT
Jake Goettle, MDT
Val Wilson, MDT
Lynn Zanto, MDT
Carol Strizich, MDT
Shane Mintz, MDT
Jim Skinner, MDT
Jim Wingertner, MDT
Bob Vosen, MDT
Darin Reynolds, MDT
Lucia Olivera, FHWA
Joe Unterreiner, Kalispell Chamber of Commerce (via Skype)
David Smith, Montana Contractors Association

Please note: the complete recorded minutes are available for review on the commission's website at https://www.mdt.mt.gov/pubinvolve/trans_comm/meetings.shtml. You may request a compact disc (containing the audio files, agenda, and minutes) from the transportation secretary Lori Ryan at (406) 444-7200 or lryan@mt.gov. Alternative accessible formats of this document will be provided upon request. For additional information, please call (406) 444-7200. The TTY number is (406) 444-7696 or 1-800-335-7592.

OPENING – Commissioner Barb Skelton

Commissioner Skelton called the meeting to order.

Approval of Minutes

The minutes for the Commission Meetings of March 24, 2020, April 7, 2020, May 5, 2020 and May 26, 2020 were presented for approval.

Commissioner Jergeson moved to approve the minutes for the Commission Meetings of March 24, 2020, April 7, 2020, May 5, 2020 and May 26, 2020. Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 1: Construction Projects on State Highway System – Contract Labor Shiloh Road – Billings

Lynn Zanto presented the Construction Projects on State Highway System – Contract Labor, Shiloh Road, Billings to the Commission. Under MCA 60-2-111 “letting of contracts on state and federal aid highways,” all projects for construction

or reconstruction of highways and streets located on highway systems and state highways, including those portions in cities and towns, must be let by the Transportation Commission. This statute exists to ensure the safety of our system, protect transportation investments, and encourage better coordination between state and local infrastructure improvements. MDT staff reaches out to local governments to solicit local projects on state systems to ensure compliance with this statute.

Summary: The City of Billings is planning to design and build a transportation improvement project on the state highway system. The project will be funded locally and will utilize contract labor. The project will be designed with input and concurrence from MDT staff to the extent practicable.

When complete, the City of Billings will assume all maintenance responsibilities associated with new project elements. Thus, MDT will not incur additional liability or maintenance costs as a result of the proposed project.

On behalf of the local government, as required by MCA 60-2-111, staff requests that the Transportation Commission delegate authority to the City of Billings to let and award a contract for the project listed below.

Location	Type of Work	Cost (estimate)	Fiscal Year	Type of Labor
Shiloh Road (N-116 / U-1031) - from Zoo Drive to Grand Avenue - in Billings	Ped Crossing Improvements	\$400,000	2020	Contract

Staff recommends the Commission approve these improvements to the state highway system, pending concurrence of MDT’s Chief Engineer.

Commissioner Jergeson moved to approve the Construction Projects on State Highway System, Contract Labor – Shiloh Road, Billings, contingent upon completion of the maintenance agreement. Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item 2: Construction Projects on State Highway System – Contract Labor
North 29th Street & North 30th Street, Billings**

Lynn Zanto presented the Construction Projects on State Highway System – Contract Labor – North 29th Street & North 30th Street, Billings to the Commission. Under MCA 60-2-111 “letting of contracts on state and federal aid highways,” all projects for construction or reconstruction of highways and streets located on highway systems and state highways, including those portions in cities and towns, must be let by the Transportation Commission. This statute exists to ensure the safety of our system, protect transportation investments, and encourage better coordination between state and local infrastructure improvements.

North 29th Street and North 30th Street – Billings

The City of Billings will be converting portions of North 29th Street and North 30th Street (between Montana Avenue and 6th Avenue North in downtown Billings) into 2-way facilities. As part of this conversion, the City will be installing new signals and upgrading pedestrian crossing features at intersections along these routes.

MDT headquarters and Billings District staff have reviewed and concur with the recommended improvements. The City of Billings will provide 100 percent of project

funding (estimated at \$1,900,000) and the City will be required to complete MDT's design review and approval process (to ensure that all work complies with MDT design standards).

When complete, MDT will assume all maintenance and operational responsibilities associated with improvements on National Highway System (NHS) routes. The City of Billings will assume maintenance and operation responsibilities for improvements on all other routes.

Summary: The City of Billings is proposing to convert portions of North 29th Street and North 30th Street (between Montana Avenue and 6th Avenue North in downtown Billings) into 2- way facilities. As part of this conversion, the City is requesting Commission approval to install new signals and upgrade pedestrian crossing features at intersections along these routes.

Staff recommends the Commission approve these modifications to the state highway system and requests that the Commission delegate its authority to let, award, and administer the contract for this project to the City of Billings pending concurrence of MDT's Chief Engineer.

Commissioner Hope moved to approve the Construction Projects on State Highway System, Contract Labor – North 29th Street & North 30th Street, Billings. Commissioner Sansaver seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 3: Construction Projects on State Highway System – Contract Labor King Avenue East Improvements, Billings

Lynn Zanto presented the Construction Projects on State Highway System, Contract Labor – King Avenue East Improvements, Billings to the Commission. Under MCA 60-2-111 “letting of contracts on state and federal aid highways,” all projects for construction or reconstruction of highways and streets located on highway systems and state highways, including those portions in cities and towns, must be let by the Transportation Commission. This statute exists to ensure the safety of our system, protect transportation investments, and encourage better coordination between state and local infrastructure improvements.

King Avenue East Improvements – Billings

The City of Billings is proposing modifications to King Avenue East (U-1026) to promote operational improvements, bike/ped safety, and improved stormwater drainage between Orchard Lane and Jackson Street. Proposed improvements include roadway widening, sidewalk upgrades, new shared-use paths, street lighting and ADA improvements.

MDT headquarters and Billings District staff have reviewed and concur with the recommended improvements. The City of Billings will provide 100 percent of project funding (estimated at \$2,960,000) and the City will be required to complete MDT's design review and approval process (to ensure that all work complies with MDT design standards).

When complete, the City will assume all maintenance and operational responsibilities associated with these improvements. Thus, MDT will not incur additional liability or maintenance costs as a result of the proposed improvements.

Summary: The City of Billings is proposing modifications to King Avenue East (U-1026) to promote operational improvements, bike/ped safety, and improved

stormwater drainage. Specifically, the City of Billings is requesting approval for roadway widening, sidewalk upgrades, new shared-use paths, street lighting and ADA improvements between Orchard Lane and Jackson Street.

Staff recommends the Commission approve these modifications to the Urban Highway System and requests that the Commission delegate its authority to let, award, and administer the contract for this project to the City of Billings - pending concurrence of MDT's Chief Engineer.

Commissioner Sansaver said we would review all of these projects whether they are paid for by the City of Billings or City of Bozeman, our engineering reviews all that. Do we also do the oversight? Dwane Kailey said no. If it is paid for by the city, they do all the oversight. If we're using federal aid, we will provide the oversight unless we have a means for them to do it. To date, the local governments have exercised that opportunity. Commissioner Sansaver said as far as the law of the State of Montana, we don't have anybody that goes in and sees it was actually done right? Dwane said we do not go back in and verify that it was actually built in accordance with the plans and specs. Commissioner Sansaver said I have a problem with that. Not that the City of Billings or their engineers did it and our engineers checked it, but through all my years of construction there's always been a backup where it goes back to the source. For example if you were to drive through there two years from now and it may look really nice but it's not built to the code of the State of Montana, what's the repercussion for them to go back and correct it to the code? Dwane said there's a whole lot of things there and we're having those discussions right now with the League of the Cities and Towns. The biggest issue is that the liability and risk is all on the local government. It's their jurisdiction and their roadway and their maintenance, so they bear all the risk and liability if they don't build it according to code. If we were to not build it according to code, one of the risks would be a lawsuit and losing that lawsuit. If it's federal aid funds there is a little bit higher risk because the feds could come in at a later date and chose not to participate and request their money back. Again, if it's federal aid we do have final oversight. So really the biggest issue is the risk and liability and that is all borne by the local government.

Commissioner Sansaver said I appreciate that part of it, however, we have different cities building to different codes and concepts than we have here at the State of Montana for our codes and concepts. We could end up with an albatross with the projects that are going on out there that really aren't to your degree of acceptance in engineering. I don't know how we fix that but I find it to be a concern. I've built for over 45 years and I've engineered for many of those years. If you were to come out and see one of my projects you may say you'd do it entirely different. Being the body who approved these projects, even though they are being fully paid by the City of Billings, I would think that some onus of responsibility would go along with our approval of the projects. I don't know where we can go with that but I did want to speak to that because I find it to be kind of odd that we approve them doing things but we don't have any particular code that applies to what they are doing. We say we do on the back side but if they don't do it we don't have any recourse.

Dwane Kailey said your points are very valid. The one thing I would add is that most of the bigger cities we deal with all have licensed professional engineers on staff and/or they are working with a consultant that is a licensed professional engineer. As engineers we have different opinions about how things should be done but they are always within good engineering judgment, so I'm confident that judgment is being used. You're right that they might be doing it in a manner different than we would but that's based on an engineering opinion. Commissioner Sansaver said that makes a lot of sense, however, some things can get really sloppy that an engineer somewhere else might just say that's okay but you might show up and say what in the world is this. It could have the right codes, the right rebar, the right everything but it looks like hell. Where does the buck stop? We're giving the approval but we don't really

have any right to say it's not correct and we want it corrected. I don't know where we go with that.

Lynn Zanto said we do try to get a maintenance agreement in place and we have some liability provisions within those agreement. Also if there is something we see after the fact that isn't being addressed or taken care of or a safety issue, we have provisions in those agreements that say we can tell them to go fix it or we can go fix it ourselves and bill them. Commissioner Sansaver asked if it was by law or policy. Lynn said it is more by policy based on our interest and responsibility in protecting the investment on our state and federal aid system. Commissioner Skelton asked if it was MDT's policy, not the local government policy. Lynn said it is an MDT process and policy.

Val Wilson said we have actually gone through a large process to try and make sure that when these local governments want to build on the system that they do pick up the maintenance and the liability and it's all contractual. It is by policy that we have this process, but it is in the contract that they have to sign a maintenance agreement that they will maintain. If they don't maintain then we can go in and make the changes and bill those local governments. I won't tell you that's true on all of our past projects but three years ago we started this process of going forward to have real tight agreements. We had a couple of cases, one out of Butte that cost us a lot of money because we were arguing about who should be maintaining it, and the court said the liability still rests on you. So the question of where does the buck stop is a great question. We've been wrestling with that and working with the cities. Of course the cities don't want the liability but if they want to build in MDT's right of way, our stance has been consistently that they are going to have to accept the maintenance agreement. So if it is on our right of way, we make the payments but if we don't catch it in time and do the fix ourselves, they will indemnify MDT. So it's complicated. Commissioner Sansaver asked if they were comfortable with that. Val Wilson said I believe our contracts are pretty tight and they haven't been challenged yet in court. All we can do is look at what the courts have done before and try to build our contracts accordingly.

Kevin Christensen said it might be helpful to go into more detail about our efforts with the League of Cities and Towns in that regard to give the Commissioners a better idea of what the goal is. Commissioner Sansaver said certainly their engineers sit down and look at what the state requires. They are trying to fall in line with what the state requires and I don't question any of the engineers or any of the contractors out there. But rather than being a rubber stamp of yea and nay sitting up here, I think it's important to know where the buck does stop if something goes afoul out there that isn't according to the state of Montana's requirements and regulations and loss. Kevin Christensen said that is what this effort with the League of Cities and Towns is all about. It's coming up with standard agreements – one for routes where we're responsible for the maintenance and one for the routes where the cities and towns are responsible for the maintenance.

Lynn Zanto said basically the larger communities tend to have resources to do work on our system is an area-wide agreement. There would be two agreements because the local governments have jurisdiction over about 75% of the Urban Highway System. It just so happens that the Commission has placed them on the federal aid eligible system. The area wide agreement would allow them to move forward and do more basic improvements without having to come through our rigorous review process that we do for projects that have system impact. For the more complicated projects, they will still have to do that same level of review and in both cases because of the law we can't waive the Commission's authority to delegate to them to let and award. They've been asking why the Commission needs to approve projects especially on routes that they have jurisdiction over but are on the urban highway system and we've told them that it's the law. We're trying to work with them to get information on their projects earlier because of time, like the Billings projects they

want them but are waiting for your approval. We're trying to align time frames with them that also protects the state with pretty solid agreements. We're very close to having the boilerplate in place and then the next part will be hopefully executing them.

Commissioner Sansaver said in clarification for me, this is brought to us even though it's paid for by the City of Billings, was engineered by their engineers, it was reviewed by our engineers and all we're doing is saying we know there is a project going on there. The onus does not sit with the State of Montana or the Commission when we say yea or nay. The buck doesn't stop here. We're just saying you're building project, good for you. You checked with our engineers, good job. But if a lawsuit ever came out of a terrible accident, where do they go? They go to the deepest pockets they can find. That's my concern. I think it's great that the City of Billings is doing all these improvements and they have very qualified engineers on board and I've worked with a lot of them but that's not the issue. The issue to me is what are we doing in concurring with this project going forward? What is our place in this whole step other than saying it's wonderful you're doing a project, we all agree, go ahead?

Dwane Kailey said I think you hit the nail on the head – if we go back to the statutes they are very specific to what the Commission has to do. You have to delegate that authority to let and award that project. The statutes don't go on and say that ultimately MDT has the authority on how that roadway is constructed – we don't have that authority. I think there is the conundrum about what's actually in the law and isn't in the law. I don't think we have the authority to go in and say you built this wrong. Commissioner Sansaver asked what happens if we say no. Lynn Zanto said the other part of statute regarding your authority in making your decisions as a Commission is you rely on the processes and procedures that the staff and department has in place. Regarding the project of the one-way streets that are being converted to two-way streets, they actually submitted that at your last meeting and as we were going through the review, they didn't have it in their Local Transportation Plan, so they didn't meet all the requirements that they needed to. We worked with them to dot the "T's" and cross the "T's" and get everything in place. That is where our process and procedures do those checks up front – we're looking at their plans and getting a contractual agreement in place that hopefully should an issue come up, we can go back to that process and that agreement and we'll be okay.

Commissioner Sansaver said I want it understood that I'm totally for these projects; I'm not questioning that. I'm questioning the authority of the Commission. If we were to say no on this, where would the city go with it? We don't have some type of follow-up on it like an inspection, a drive by or follow through, so what are we doing, other than following a rule that it has to go through the Commission?

Commissioner Fisher said I would kind of dovetail off what Commissioner Sansaver is saying. If the commission says no and my understanding is the Commission can't say no because we're relying on policies and procedures that the Commission probably can review but we're relying on staff to do its job but if we say no then what really happens? The indemnity agreements are great with the city but it relies upon the solvency of the city to be able to fund the indemnity. So if it's a small town that doesn't have any money and they get sued for a project that we approved and we're brought into the lawsuit saying there's a judgment against us and we say okay now indemnify a city and their insolvent, what do we do? Who pays?

Val Wilson said if we think through this process right, if the staff comes to you and says the City of Billings has this proposal but they haven't provided a transportation plan therefore it's not in accordance with policy and they've refused to sign a city wide agreement, then you have a reason to say no, we're not approving it. But to just not approve it without a reason would seem to be arbitrary. What I'm understanding from Lynn is that this project has been through the planning review, they have looked at it and found that the plans have been stamped, they are reviewed internally,

and hopefully that is a liability you can depend on. If Lynn comes to you and says this is not ready to go and we recommend denying it because they won't sign the agreement which puts the state at risk that would be a reason to deny. Lynn doesn't bring you stuff until it's ready. You can deny for sure, deny and send back for something being wrong or something being processed incorrectly, but if staff looks at it and makes a determination that it's ready to go, without further information, I think the Commission would be hard pressed to just deny it without a reason. Commissioner Skelton said we have the authority to deny any project we want to. So even if Lynn comes and says these contracts are all signed, the Commission can ask for more information. In order to give MDT oversight on an issue like you're asking for – if we approve this project we get to come in and have the final look at it. In order to do that we would probably need a rule change or go to the Legislature and change the law. Is that correct? Val Wilson said it would be more than a rule change, but there have been jurisdictions that have actually asked to be taken off the system so they don't have to go through the Commission.

Commissioner Hope I agree with what Commissioner Sansaver is saying as well. My question is about the operational maintenance that was happening prior to these improvements. Does the City completely take over for that whole street? Lynn said whoever is currently maintaining the roadway itself, it usually stays there; if the local were responsible or if the state was. Usually maintenance responsibility doesn't change. If we get the city wide agreement in place that we're striving for, every year we will send an updated map to remind them they are responsible for these and we're responsible for these. Commissioner Hope said if they don't meet the standard, then you could say we're not going to do our maintenance responsibility because you don't meet the engineering requirements that we requested so we're no longer funding the maintenance portion of our agreement. Correct? Lynn Zanto said that is a discussion we can have; I think we've built in some protections especially on the Urban System routes such as the Urban Pavement Preservation Program and it wouldn't be eligible for additional federal aid funding if they are not keeping up their end of the bargain. Dwane Kailey said the way the agreements are written now is that if the local government is failing to maintain their end, we can actually step in and provide that maintenance and then bill that local government.

Commissioner Hope said my concern is I look at what is happening in the community of Bozeman with our Main Street which is Hwy 191, there's some who would like to take it off the federal system and there is another push to keep it on. They want the best of both worlds quite honestly but they don't want to comply with the rules and it's a real problem. I believe that the City of Bozeman's engineering staff probably has a disdain for MDT because it does not meet up with their needs. I've sat in meetings with them and asked those people to meet with MDT before moving forward and they won't do it. So I've got a real problem with just rubber stamping this as well because I think you're going to have some real issues coming out of Bozeman before it's over with.

Lynn Zanto said how many years have we been this close to getting those agreements in place with them? The League has been super helpful and I think they see the value. There are frustrations on the local side because they don't understand the law either and they don't understand why the Commission has to approve those routes. Those routes are eligible for federal aid and that's the main reason. Kevin Christensen said that is why the effort has taken three plus years – wading through those issues. They just don't understand the federal aid and how those work and the Commission's authority. It's been really difficult to work through that with the League of Cities and Towns but we are so close to having these standardized agreements that really clearly define who is responsible for what and the standards that have to be adhered to and indemnification and so forth. I think it's a really big improvement over how we've done things in the past.

Commissioner Jergeson said my question is projects like this are big time sensitive and you mentioned that the maintenance agreement is not entirely complete on this proposal. Lynn said it is in their hands and we're just waiting for them to sign and return it. Commissioner Jergeson said we can say we're not going to approve this until that is in hand. Would that cause a problem in them proceeding in a timely manner given the seasonal nature of work in Montana? Lynn said I can't speak for them but I think they would be concerned because they know the projects have been let and just waiting on approval by the Commission. Val Wilson said it is my understanding that, although we're looking on these over-arching agreements and we're this close to signing, we're doing agreements one at a time with these jurisdictions. So don't be confused about our over-arching agreements, we're still demanding an agreement for every project. Commissioner Jergeson said is the over-arching agreement going to be brought to the Commission as the stock agreement that we go to the cities with or is it simply when the staff has decided to go with the over-arching agreement for all projects that we've never had a chance to look at? Val Wilson said we can certainly provide the draft agreement to the Commission upon your request but it does not need to be approved by you, it's not within your authority. Commissioner Jergeson said I'm beginning to think we have no authority.

Commissioner Hope said regarding this request, did the City of Billings realize that agreement had to be in place and why have they not signed it and put it in with what we have today. Lynn said she was not sure. Commissioner Skelton said that is a really fair question – clearly this isn't their first rodeo and they knew that agreement should have been signed and in place. Commissioner Skelton said we've already passed the first two and I'd be reluctant to not pass this one as well but with a very stern warning that we will not pass any more unless all the paperwork is signed, sealed and delivered prior to coming to the Commission.

Commissioner Hope said I will not be voting for this based on the information I've got – I don't care that we've voted for the first two. I think it's a real problem and I think there's a problem with these cities trying to skirt around the system and unfortunately this is the one that came to my attention. If I could go back and vote on the other two again, I'd pull my vote and say no. Commissioner Skelton said the other two had all the signed documents in place. Lynn said there are two processes – one is we just proactively say are you doing any work on these systems and a lot of them are on routes they have jurisdiction over so they are already responsible for maintain them. I believe those were related to that process. This third one came through systems impact and it is a much more involved and detailed process.

Commissioner Skelton for point of clarification, if we chose not to approve this agenda item today, then does that automatically come back to us after the paperwork is in place? Commissioner Hope said the motion was contingent upon receiving the maintenance agreement. Commissioner Skelton said that was on the first one and there is no motion on this yet. Commissioner Jergeson said at a minimum that needs to be in this one. The City can't go ahead with this until they get that agreement delivered to us. Commissioner Sansaver asked if it was reasonable to assume they could have that agreement within the next week. Lynn said it's in their hands, it's been through our review and it's ready to go and we're waiting for their signature. Dwane said going back to your original point about the final review, we are meeting regularly with the League of Cities and Towns on these agreements and we can bring that issue up and have that discussion with them if that is what the Commission desires. Commissioner Sansaver said we should have that in place for approval. I feel really awkward that we really don't have any authority other than putting a stamp on it and sending it out. I'm not a big authoritarian by any means, but if I'm going to vote on something that is a \$2.9 million project that needs our approval, I want to know that it's being done according to the code of Montana not just what some engineer over there said was good and you guys all looked at it and said it was good. When the buck finally stops it is going to stop at this Commission. That's where the money is going to be – the State of Montana Department of Transportation against

whatever contractor did it. That's the problem I have with it. If it's a wake-up call on this third one for the City of Billings to get their paperwork in order, then I agree with Commissioner Hope that if they can't do due diligence, then I don't see our point in automatically approving something. Commissioner Skelton said I agree with what you said. It really bothers me that they didn't get those agreements in – this isn't their first rodeo and it's unreasonable as far as I'm concerned. I don't want to approve anything until all agreements are in your hands and you've reviewed them and agree with what they're saying. Commissioner Jergeson asked if they could defer action until the commission phone call on June 30th. We've got three days to get their signature for this project.

Commissioner Jergeson moved to defer the Construction Projects on State Highway System, Contract Labor – King Avenue East Improvements, Billings until the June 30th scheduled conference call and completion of the maintenance agreement. Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Public Comment

No public comment.

Agenda Item 4: Interstate Maintenance Program Additions to IM Program (6 New Projects)

Lynn Zanto presented the Interstate Maintenance Program, Additions to IM Program (6 New Projects) to the Commission. The Interstate Maintenance (IM) Program finances highway projects to rehabilitate, restore, resurface, and reconstruct routes on the Interstate System. Montana's Transportation Commission allocates IM funds to MDT Districts based on system performance.

At this time, MDT is proposing to add 6 new projects to the IM program – three in District 1, one in District 2, one in District 3, and one in District 5. The projects on the attached list (Attachment A) meet the criteria set forth for IM-funded projects. If approved, it would be MDT's intention to let these projects individually.

The estimated total cost for all project phases is \$18,600,000 (\$16,900,000 federal + \$1,700,000 state) – with the majority of the federal funding originating from the Interstate Maintenance (IM) Program and a portion (\$2,300,000) from the Highway Safety Improvement (HSIP) Program.

Summary: MDT is requesting Commission approval to add 6 new projects (listed on Attachment A) to the Interstate Program. The proposed projects are consistent with the goals and objectives identified in the Performance Programming (Px3) Process – as well as the policy direction established in TranPlanMT. Specifically, roadway system performance and traveler safety will be enhanced with the addition of these projects to the program.

The estimated total cost for all project phases is \$18,600,000 – with the majority of the federal funding originating from the Interstate Maintenance (IM) Program and a portion (\$2,300,000) from the Highway Safety Improvement (HSIP) Program.

Staff recommends that the Commission approve the addition of these IM projects to the highway program.

Commissioner Jergeson this question applies to the next two agenda items as well. Does this information then populate into the Red Book? Lynn Zanto said once you approve these then we go to Federal Highways to get their final approval to make

sure we have enough money and we're not proposing more expensive projects than we have funds to handle. From there, we request formal programming of the design. Then they feed into the Tentative Construction Program, the Red Book and then we'll start to see place holders in the TCP. These are preservation projects so they should move into the schedule fairly quickly. Commissioner Jergeson said a lot of projects that go in at that point are beyond the five years, but some of these are small enough that if there was money available because some projects fell through the cracks or if there was a big redistribution from the feds at the end of the year, some of these projects might move forward into earlier parts in the Red Book. Lynn said these likely will come in the early years of the Red Book. Last year we put in pavement preservation plugs, so at the bottom of your program sheets there is a total dollar amount for preservation work that we need to get done. Preservation work is doing the right treatment at the right time, so we move those based on timing of the improvement that's needed. So the preservation ones will come into the earlier years of the TCP. The safety one, I'm not sure where that one will fall.

Commissioner Jergeson said what I like about this spreadsheet is that it tells us what our estimated state match is on these projects that is an obscure number to discern in the Red Book. What's in the Red Book is the federal portion of a construction phase and that's a different apple than this orange to a degree. I don't know how we reconcile it so you can track information from this document to that document. Maybe there is some internal way you folks crunching the numbers are able to do that for those of us who are oversight lay people. It's been my consistent frequent problem as to the tracking or non-tracking of these kind of numbers from one document to the next. On this document I do like that the state match is there because I don't think you can allocate a penny of federal money unless you know whether you have state money available to allocate against it. To be able to look at the state money and the federal money I think is fundamental to us doing our work as a Commission.

Commissioner Sansaver moved to approve the Interstate Maintenance Program, Additions to IM Program (6 New Projects). Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 5: National Highway System Program Additions to NH Program (7 New Projects)

Lynn Zanto presented the National Highway System Program, Additions to NH Program (7 New Projects) to the Commission. The National Highway System (NH) Program finances highway projects to rehabilitate, restore, resurface, and reconstruct Non-Interstate routes on the National Highway System. Montana's Transportation Commission allocates NH funds to MDT Districts based on system performance.

At this time, MDT is proposing to add 7 new projects to the NH program – three in District 1, one in District 2, and three in District 3. The projects on the attached list (Attachment A) meet the criteria set forth for NH-funded projects. If approved, it would be MDT's intention to let these projects individually.

The estimated total cost for all project phases is \$17,600,000 (\$15,200,000 federal + \$2,400,000 state) – with the entirety of the federal funding originating from the National Highway System (NH) Program.

Summary: MDT is requesting Commission approval to add 7 new projects (listed on Attachment A) to the National Highway System Program. The proposed projects are consistent with the goals and objectives identified in the Performance Programming (Px3) Process – as well as the policy direction established in TranPlanMT.

Specifically, roadway system performance and traveler safety will be enhanced with the addition of these projects to the program.

The estimated total cost for all project phases is \$17,600,000 (\$15,200,000 federal + \$2,400,000 state) – with the entirety of the federal funding originating from the National Highway System (NH) Program.

Staff recommends that the Commission approve the addition of these NH projects to the highway program.

Commissioner Jergeson asked if there were no preservation projects in the Glendive District needed. There is nothing here to foresee the available funding. Lynn said there are preservation projects in the Glendive District and the other districts as well. Those came to you at one of the prior meetings. Commissioner Skelton asked if these were additional projects from the ones previously presented. Lynn said yes.

Commissioner Jergeson moved to approve the National Highway System Program Additions to NH Program (7 New Projects). Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 6: Primary System Program, Additions to STPP Program (11 New Projects)

Lynn Zanto presented the Primary System Program, Additions to STPP Program (11 New Projects) to the Commission. The Surface Transportation Program – Primary (STPP) finances highway projects to rehabilitate, restore, resurface, and reconstruct routes on the state's Primary Highway System. Montana's Transportation Commission allocates STPP funds to MDT Districts based on system performance.

At this time, MDT is proposing to add 11 new projects to the STPP program – four in District 1, four in District 2, one in District 3, and two in District 5. The projects on the attached list (Attachment A) meet the criteria set forth for STPP-funded projects. If approved, it would be MDT's intention to let these projects individually.

The estimated total cost for all project phases is \$32,300,000 (\$28,000,000 federal + \$4,300,000 state match) – with the entirety of the federal funding originating from the Surface Transportation Program – Primary (STPP).

Summary: MDT is requesting Commission approval to add 11 new projects (listed on Attachment A) to the Primary System Program. The proposed projects are consistent with the goals and objectives identified in the Performance Programming (Px3) Process – as well as the policy direction established in TranPlanMT. Specifically, roadway system performance and traveler safety will be enhanced with the addition of these projects to the program.

The estimated total cost for all project phases is \$32,300,000 (\$28,000,000 federal + \$4,300,000 state match) – with the entirety of the federal funding originating from the Surface Transportation Program – Primary (STPP).

Staff recommends that the Commission approve the addition of these STPP projects to the highway program.

Commissioner Hope moved to approve the Primary System Program Additions to STPP Program (11 New Projects). Commissioner Sansaver seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 7: Secondary Roads Program, Additions To STPS Program (6 New Projects)

Lynn Zanto presented the Secondary Roads Program, Additions to STPS Program (6 New Projects) to the Commission. The Surface Transportation Program – Secondary (STPS) finances highway projects on the state-designated Secondary Highway System. Secondary Roads are those routes that have been selected by the Montana Transportation Commission to be placed on the Secondary Highway System.

Secondary Roads Program funding is distributed by formula and is utilized to resurface, rehabilitate and reconstruct roadways and bridges on the Secondary System. Capital construction priorities are established by the Counties and pavement preservation projects are selected by MDT (per the guidance in MCA 60-3-206).

At this time, MDT is proposing to add six new projects to the STPS program – one in District 1, one in District 2, two in District 3, and two in District 4. The projects on the attached list (Attachment A) meet the criteria set forth for STPS-funded projects. If approved, it would be MDT's intention to let these projects individually.

The estimated total cost for all project phases is \$22,400,000 (\$19,400,000 federal + \$3,000,000 state match) – with the entirety of the federal funding originating from the Secondary Roads (STPS) Program.

Summary: MDT is requesting Commission approval to add six new projects (listed on Attachment A) to the Secondary Roads Program. The proposed projects are consistent with the goals and objectives identified in the Performance Programming (Px3) Process – as well as the policy direction established in TranPlanMT. Specifically, roadway system performance and traveler safety will be enhanced with the addition of these projects to the program.

The estimated total cost for all project phases is \$22,400,000 (\$19,400,000 federal + \$3,000,000 state match) – with the entirety of the federal funding originating from the Secondary Roads (STPS) Program.

Staff recommends that the Commission approve the addition of these STPS projects to the highway program.

Commissioner Sansaver moved to approve the Secondary Roads Program Additions to STPS Program (6 New Projects). Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 8: Bridge Program Projects, Additions To Bridge Program (3 New Projects)

Lynn Zanto presented the Bridge Program Projects, Additions to Bridge Program (3 New Projects) to the Commission. MDT's Bridge Bureau reviews bridge conditions statewide and provides recommendations for construction projects to be added to the Bridge Program. At this time, the Bridge Bureau recommends adding three (3) new projects to the Bridge Program.

Project information is shown on Attachment A. If approved, it would be MDT’s intention to let these projects individually. The estimated total cost for all project phases is \$60,400,000 (\$52.3M federal + \$8.1M state).

Summary: MDT is requesting Commission approval to add three (3) new projects to the Bridge Program. The breakdown of project costs (by program) is listed below:

Surface Transportation Bridge (STPB) Program	\$ 39,700,000
National Highway Performance Bridge (NHPB) Program	<u>\$ 20,700,000</u>
	\$ 60,400,000

The proposed projects are consistent with the goals and objectives identified in the Performance Programming (Px3) Process - as well as the policy direction established in TranPlanMT. Specifically, roadway system performance and traveler safety will be enhanced with the addition of these projects to the Bridge Program.

Staff recommends that the Commission approve the addition of these projects to the Bridge Program.

Commissioner Sansaver said he appreciated that the Commission has taken the stand on the importance of the timber bridges and the replacement of them and they can’t happen fast enough. It’s good to see we’re taking action on them.

Commissioner Sansaver moved to approve the Bridge Program Projects, Additions to bridge Program (3 New Projects). Commissioner Sansaver seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item 9: Speed Limit Recommendation
MT 287 – Alder**

Dwane Kailey presented the Speed Limit Recommendation for MT 287 – Alder to the Commission. Madison County requested a speed study through the town of Boulder. In particular they wanted us to look at the area around the Garnet USA Open Pit Hardrock Mine. We have done the review, looked at the traveling speeds, the crash history and the citation information. Based on our review we’re recommending the following:

A 40 mph speed limit beginning at 300 feet east of No Name Street and continuing east an approximate distance of 800 feet.

Then transitioning to a 50 mph speed limit beginning at straight-line station 51+00 (600’ east of Virginia Ave) and continue east to station 43+00, an approximate distance of 800-feet.

The transitioning to a 60 mph speed limit beginning at straight-line station 43+00 (450’ west of Judy Ln) and continue east to station 2+00, an approximate distance of 4,100-feet or 3/4-mile.

We have presented this to Madison County and they have concurred and the letter is attached.

Commissioner Sansaver moved to approve the Speed Limit Recommendation for MT 287 – Alder. Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 10: Speed Limit Recommendation US 93 – Eureka North to Canada

Dwane Kailey presented the Speed Limit Recommendation for US 93 – Eureka North to Canada to the Commission. This is a follow-up item from the last Commission Meeting. Commissioner Fisher had asked for a count of the approaches and I emailed that to her this morning. Commissioner Fisher said there are over 50 approaches to the highway between the Arena and the Canadian Border or is it for the full stretch of the proposed speed limit. My understanding is the full stretch is longer than from the arena to the border. Dwane said that is correct. They are asking for a 55 mph speed limit for the majority of the corridor.

Just as a recap we did do a speed study basically from the town of Eureka north to the Canadian border. Our recommendation is as follows:

A 60 mph speed limit beginning at station 1888+00 (600' north of the intersection with MT 37) and continuing north to station 2010+00 (250' north of Ksanka View Road), an approximate distance of 2.31-miles.

Perpetuate the statutory 70 mph speed limit from milepost 183.3 to milepost 186.9 (3.6-miles).

A 50 mph speed limit beginning at station 2201+00 (200' north of the intersection with Scenic Drive) and continuing north to station 2227+00, an approximate distance of 2,600 feet.

We did present that to Lincoln County and their request was they would like to see a 45 mph speed limit to the Intersection with Lindsay Road and then 55 mph into the border with Canada. Staff's recommendation is what it is and it is up to the Commission.

Commissioner Sansaver said the statutory limit is 70 mph, what is that all about. Is it state statute? For three miles kick it to 70 mph and then kick it back down? Dwane said yes. The way speeds work is the Legislature has statutorily set speeds throughout the state on all routes. It is 80 mph on the Interstate and 70 mph on all non-Interstate routes. It has then delegated authority to the Commission to establish special speeds zones. Based on an engineering investigation we can go in and provide a recommendation to you and you can then adopt a lesser speed than the statutory speeds. So yes we would have a 60 mph speed limit for a short distance and then up to 70 mph for about 3.5 miles and then back down to 50 mph. For the record that is what they are doing today. With a speed study one of the biggest things we look at is what is the public traveling today and that's essentially what they are doing.

Commissioner Fisher said it looks like there are 32 approaches based on what Dwane sent me this morning between mile post 183.3 and 186.9. Is that correct? Dwane said that appears to be correct. Commissioner Fisher said it is my understanding that the Lincoln County Commissioners support a lower speed limit for that stretch than what MDT is recommending. Dwane said that is correct.

Commissioner Jergeson said you have recommended for 3.5 miles the statutory speed limit and the County Commissioners want 55 mph. Is it the belief of the department that from your engineering studies that the drive free at night crowd are not going to observe a 55 mph speed limit? Dwane said we actually did a research project where we actually looked at locations where the speed was set outside of the engineering recommendation, and we found that if the difference was only five miles per hour there really wasn't an issue. We didn't see an uptick in crashes, we saw fairly good compliance. Once we got to 10 mph, we did start to see a change in the crash history but not statistically significant but we did see a little bit of a change and we saw a

reduction in compliance. Once we deviated beyond 10 mph, we did see a statistically significant change in the crash history and we saw a big difference in compliance. What happens is you've got the law abiding citizens that no matter what they are going to drive that speed limit and then you've got the younger group that is more impatient and got to get their yesterday, and they are going to drive what they feel comfortable. Those two mixing is a disaster. Differential speed is a huge issue and creates what we call driver frustration.

Commissioner Sansaver asked if the Lincoln County Commissioners were requesting 60 mph. Dwane said the County is actually requesting 55 mph through the area where we are saying 70 mph. Commissioner Sansaver asked if there was a problem with it being 55 mph. Dwane said I don't know if the Commission would have a problem with it being 55 mph but I have to stick to the engineering recommendation which is the statutory limit. Under the law it is your authority to set the speed as you feel appropriate. You have to consider our investigation but you are not bound by it.

Commissioner Fisher said the number of the approaches in this area that were approved by MDT are significant and there are also a number of unapproved approaches to this area. The population there is pretty seasonal but there's a huge uptick. I don't know what the Canadian speed limit is but it seems to me that going from 60 to 55 to 50 mph seems to make more sense than 60 to 70 to 50 mph. The number of approaches in this area is significant and vastly more than MDT has actually approved, so the chances of an accident are high. While I absolutely appreciate what Dwane is saying and this really is from the border to the Town of Eureka and that's not very far. I don't see the point of increasing that speed limit to the 70 mph zone in there. With the number of approaches and with the County Commissioner's expression of concern, it seems like the 60 mph, 55 mph, and then 50 mph would be consistent with what the needs of the community are.

Dwane said to clarify what Commissioner Fisher is saying is to adopt MDT's recommended 60 mph speed limit, then transition to a 55 mph speed limit where we're recommending 70 mph, and then transition to a 50 mph where we're recommending 50 mph. So it would be as follows:

A 60 mph speed limit beginning at station 1888+00 (600' north of the intersection with MT 37) and continuing north to station 2010+00 (250' north of Ksanka View Road), an approximate distance of 2.31-miles.

A 55 mph speed limit from milepost 183.3 to milepost 186.9 (3.6-miles).

A 50 mph speed limit beginning at station 2201+00 (200' north of the intersection with Scenic Drive) and continuing north to station 2227+00, an approximate distance of 2,600 feet.

Commissioner Fisher moved to approve the Speed Limit Recommendation for US 93 – Eureka North to Canada as 60 mph, then 55 mph, and then 50 mph. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 11: Certificates of Completion March & April, 2020

Dwane Kailey presented the Certificates of Completion for March & April, 2020, to the Commission. They are presented for your review and approval. If you have any questions, please feel free to ask. Staff recommends approval.

Commissioner Jergeson asked if they had seen a reduction in the work force with COVID 19, with people calling in sick on projects throughout the state. Dwane said there were some issues early on with concerns with employees as well as with counties and the restrictions they were applying. To my knowledge most of that has settled down and most of the contractors are up and running full force. Dave Smith, Montana Contractors Association, said most of the contractors once they figured out what the new strategy was on this were geared up and ready to go. I think it has affected the building side of things more often because of the amount of subcontractors that get involved in building projects. Where subs are involved it has slowed down some projects a little bit. I think they are figuring out that the other concern is the timing on permit approvals not necessarily with the state but with the cities and counties getting back in a timely manner.

Commissioner Jergeson said I have some questions for the month of April. The bid amount of 10318 was \$1.6 million and the final amount was \$4 million and lower down is JC 415 and the bid amount of \$330,000 and the final amount is \$821,000. Most of the differences are fairly small from bid amount to final amount but what's going on with these differences. When did we know when something was going wrong there and when was the Commission apprised of that? Dwane said on the slide east of Miles City, when we went out there we had additional slides that required additional work and were changed ordered into the projects. On the Mountain West Holdings Butte Horizontal Curb Signing, I'm not aware of what the big change was. Jake Goettle said that is a job order contact and we added some additional sites. The original contract was awarded with a scope in it and then design completed the next sections and added additional scope and we add those by change order. That's where you see the increase from the original bid amount to the final amount. It was adding in additional design and additional work to complete.

Commissioner Hope moved to approve the Certificates of Completion for March & April, 2020. Commissioner Sansaver seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 12: Design Build – KBP – Foys Lake Road Interchange NH 15(132)-UPN 2038022

Jake Goettle presented the Discussion and Follow-up, Alternative Contract for Design Build – KBP – Foys Lake Road, Interchange NH 15(132)-UPN 2038022 to the Commission. This is a design build project that is intended to construct the new grade-separated interchange at the Foys Lake Road and US 93 alternate route intersection and widening the existing two-lane road to a four-lane facility for approximately 1.9 miles. This project was originally advertised in January with an RFQ advertised. We had four teams respond to that RFQ and submit proposals on February 14. Our Technical Review Committee consisting of nine MDT staff from various project-related disciplines independently evaluated and scored those SOQs submitted by the four design build firms. They short listed all four firms. On March 2nd we issued the RFP package to those short-listed firms.

This project was a little unique; we used a new process called “alternative technical concepts”. That process allows the firms to propose changes to our RFP. If those changes are approved, they can submit those in their design and include those changes with their design. So we went through that process and after the completion of that on May 22nd we received three proposals. One of the four firms dropped out from the submittal process so we only received three Technical Proposals. That same Technical Review Committee consisted of nine members and then we added one non-scoring member from the City of Kalispell to review those proposals. They independently reviewed and scored those proposals and then presented the

scores to the Selection Committee. We did have a slight delay on the approval of the scores; they actually went back a second time and finalized their scores. So we had a delay in the bid opening. The bid opening was supposed to be June 11th but we delayed that a day because it is so critical that we approve those scores before we open bids. We accepted the bid prices; we locked them away in a secure facility and then finalized the scores and got through the scoring process before we opened bids. We opened bids on June 16th at 3:00 pm. We received three bid prices and in our design build process we go through a best value selection process where we rate the technical proposal differently than the bid price or higher than the bid price in most cases. In your hand-out there is a table that shows you the calculation and the score and that gives us the best value proposal. The department is recommending two recommendations for your consideration: 1) to approve the stipend payments to the two unsuccessful firms in the amount of \$200,000 each, and 2) to award the contract to LHC/JLJ Team considered the best value for MDT in the amount of \$14.7 million.

Commissioner Jergeson said I understand the 75/25 but I need you to review the mechanics of what you're evaluating that can ultimately be put at a value 75% versus the other one at 25%. How do you get this evaluation on all these people doing this so you're getting a consistent number? Something being a third of something else, what is that something else that causes you to appreciate the \$14 million.

Jake Goettle said a quick response: the RFP that we advertised for the short-listed firms includes a list of what we're going to score. The Technical Review Committee uses that scoring criteria and we change the scoring criteria based on the project and what's most important for that project, generally it is the makeup of their Team, the experience of their Team. We ask the key personnel on that Team to look at their schedule – are they going to meet the schedule that we want or are they going to exceed it. We score them higher if they can exceed that schedule. Then it includes their preliminary design – what are they going to do to meet the scope of this project and give us the design that we ask for to cover the scope. With these projects each firm provides a little bit different design to meet that scope and we score that by what's best for the project, what's best for the traveling public, and what's best for the department in this design. That's where those criteria get scored by the Technical Review Committee.

That Technical Review Committee is made up of subject matter experts from the department and those again are based on the project. Bridge projects have bridge engineers on that team, if there's Geo-tech issues, there is Geo-tech engineer on there, etc. Those individuals are scoring based on their expertise then the whole team weighs their expertise and their review of each of those proposals as they meet and combine their scores into that one final score. What makes up that Technical Proposal score is each of those individual scores and then a combination of each of those individual scores into that one final score for each proposal.

Commissioner Jergeson said the firm in the middle that was scoring both on the technical score and the bid price, what would have happened if that firm had flipped those dollar amounts for the third and fourth? They came in with a bid of \$18 million, \$4 million over the low bid and so where would they have been combining that kind of change hypothetically? Would that have changed who you would have recommended for award?

Jake Goettle said to be honest we don't do that calculation. I sure could if you want to know. It's real critical to get that Technical Proposal score right and the reason why we delayed the bid was so every one of those members on that committee has a chance to express their concerns, the benefits of each of the proposals, and the scores are considered very carefully. We don't look at bids, we don't look at any prices, and there is no price component to that technical review. Once those scores are approved by a higher level Selection Committee, then when we get prices, we

simply plug them into this calculation which is shown above the three calculations there. That's it. We don't manipulate it and we don't look for others. For your hypothetical situation we could look at it and see if that would change it.

Commissioner Jergeson said for a future meeting we could take three companies and throw some numbers up there and show what would happen with companies at various levels of difference in both categories and how, if numbers are changed, who comes out the winner so you can get a sense of how this happens. I'm always relieved when these come in and we see the one that is recommended for a project is the low bid. I think the best value for taxpayers and the public typically comes from the competitive bidding process that Montana contractors come up with the best numbers they can when they bid on a project. I'm relieved when I see this.

Jake Goettle said we did go back and look at our design build contracts since we started this program back in 2004, and actually 31 of the 39 that we've awarded have been to the low bid. We occasionally don't award to the low bid when you do this calculation but generally most of the time it's still the low bid. What I like to see the most is the highest technical proposal score which is giving the department and the taxpayer the best design, the best proposal, which becomes part of the contract and gives us the best proposal. So when they score the best and have the lowest price, it is the perfect situation and the taxpayers get the best case scenario.

Kevin Christensen said keep in mind if it doesn't go to the low bidder, they might be giving the department much more than we're asking for and it still boils down to best value. So even if it doesn't go to the low bidder, the way this is set up, the department and the taxpayer are still getting the best bang for their dollar.

Commissioner Hope said that is important to understand, the cheapest isn't always the best taxpayer dollar spent because you might have to come back and fix something years down the line or you have a subpar product. So spending a little more could be a better value for the taxpayer at that point in time. Commissioner Sansaver said is it reasonable to say that what MDT really looks at is truly the definition of responsive and responsible bidder? It is reasonable to say then that if we went with the \$18 million or the \$950,000 bid because they were more responsive to the RFP and to the public that is why we'd go with them? That is what you're doing with this technical review is to assure that they are being responsible to MDT and the people of the state of Montana. Jake Goettle said there is a mechanism built into our process that if a team is non-responsive or doesn't meet the requirements of the RFP, they can be non-responsive. Depending on the outcome of that and how egregious that is, they may not be in this calculation. We might say they are non-responsive and not considered or carried forward for consideration.

Commissioner Sansaver said for me the important aspect of this is in 45 years of contracting, that's always been in a federal document – responsive and responsible. We're making it responsible by having this technical aspect that you all go through with the engineers from the Bridge Department, Geo-tech Department or whoever it might be, we're assuring that they have been responsible to that RFP. If you were to throw that out in public, responsive and responsible ... responsive simply means they responded. It's like a census, I responded to the census but were you responsible enough to that census to actually answer all the questions, that's a different story. I'm encouraged by the fact that we do have this technical review and we are as responsible to the contractor who is responsible to the state of Montana that they've dotted all their I's and crossed all the T's. We may be paying more but I totally agree that just because you have the low bidder doesn't mean you have the best bidder. I'm encouraged by this system and want to commend you on the job you guys do on it.

Commissioner Sansaver moved to approve the Design Build Project – KBP – Foy's Lake Road Interchange NH 15(132)-UPN 2038022. Four Commissioners voted aye; Commissioner Fischer recused herself.

Commissioner Sansaver moved to award for the two unsuccessful responsive firms. Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 13: Discussion and Follow-up Alternative Contracting

Director Tooley

I'm going to touch on a couple of things and then defer most of my time to the COO and Chief Legal and Jake Goettle for the follow-up on the discussion we kind of touched on earlier.

State Special Highway Review Fund

We still have enough even with the increases due to COVID to continue the Federal Aid Program that you have approved. We don't plan on making any changes and staff is still delivering the projects and we expect we're going to be able to do that without missing a beat for several years. We think it will recover in a couple of years and we'll be back where we were. You've seen Mr. Flynn's discussions before – he's gotten projections of when the fund will start turning upside down again and it moves it in a couple of years. It was eight before and now it's closer to six but it doesn't mean we should stop doing what we're doing which is delivering the projects. So that will continue.

Re-authorization

We are watching with interest what's going on in Washington. There is basically three pieces of federal legislation moving. We're interested long-term in Reauthorization. The House and the Senate have separate bills. The Senate bill was by-partisan and came out of committee with a totally unanimous vote and now is waiting for action on the Senate floor. The House bill was a little more contentious and that is also making its way through the process. Of the two, we prefer the Senate bill because of the way it recognizes the highway side of it while the other one is a lot more interested in transit which we're certainly not against but you already know about wooden bridges and all the other issues we have.

The CARES Act

Another piece moving through is COVID related funding, the CARES Act money. The Transportation Backstop, they are working through that. I think its \$15.3 billion which if passed, then part of it would come to us to the tune of about \$153 million and should be a zero match. That's what we've asked for and that's what was in the law. If you go back to the State Fund discussion and give us a \$153 million of federal aid to match usually in a very short period of time, that's going to be very problematic for the department and for the State Fund. Lynn said we're hopeful they will take some action at the end of July or August. Director Tooley said it's kind of working for us and we're watching that pretty close. We have bi-weekly calls with Congressional staff to see what's on their mind and they say things are moving forward and that's pretty promising.

Vision Zero

The other thing that's not so promising is the fatalities on our highways are just through the roof. The traffic is down but the lethality of incidents on our roadways are way up. It's the same story and it's really frustrating to see the continuing lack of restraint use. Speeding is up because the traffic is down and for some reason people think is a fine time to drink and drive. As a result on the last two weekends we've

had 19 fatalities on our roadways. That's going to change the trend. A couple of multiple fatality incidents will change the entire picture and could erase all the progress we've made toward Vision Zero. We're out there with the message but really it's the person behind the wheel that makes the decisions and they need to start making better decisions frankly. It's pretty discouraging. You can't yell at the people who have passed but we're going to try and get the attention of the ones that haven't yet. Pretty discouraging but we're going to do what we can to keep that number from going up.

Alternative Contracting

I'm going to turn it over to the Chief Legal and the Chief Operations Officer on a follow-up discussion on alternative contracting. I know enough about this to be dangerous. I do have an opinion on it – I like it, it's delivering some great projects but to get into the nuts and bolts of it, that's for Kevin and Jake and folks that deliver those projects. If you go out to see some of them, our first CMGC project is well underway at Trout Creek and it's amazing. If you haven't seen the video yet, take a look at that. That is an approach that just wouldn't be delivered through the typical design bid build process. I encourage you to take a look at that, it's really amazing what can be accomplished through this. With that I'll hand it over.

Val Wilson, Chief Legal Counsel

We took a look at questions that were raised at the February meeting and Commissioner Jergeson's question about throwing out high and low bids. Jake is ready to respond to that. We're also taking a look at scoring tools, mechanisms and the comparative analysis that Commissioner Fisher requested. I will tell you that staff is not going to address the information that is in Commissioner Fisher's June 24th email from yesterday. For full disclosure I'll tell you that isn't the first time that we've received and reviewed an email from Commissioner Fisher that is apparently trying to influence MDT's selection scoring process in cases where her husband's company has been a bidder in the project.

So for full disclosure, I want to go back to the Salmon Lake email. I don't know if you remember it but the staff remembers it well. There were a series of emails, the first one was May 10th from Don Brummel of LHC to MDT staff questioning the technical scores for the scores in slots three and six. The comment was that it looked like they scored Kiewit unusually high as to the rest of the proposers. Four days later Commissioner Fisher sends an email to Director Tooley and the Commission, you all know all this is public record and is kept by Lori, that has a similar theme where the Commissioner says she is concerned about score three as he or she appears to be an outlier with a bias towards Kiewit. She then goes through some calculations how Schellinger, if things were different and things were thrown out, could have turned up to be the best value score. She lays them all out and attaches a spreadsheet. In reviewing the metadata, MDT determined that spreadsheet was actually generated by Schellinger Construction and it wasn't disclosed in the email. So it appears that, under the conflict of interest, it is a conflict of interest for a Commissioner or the Commission as a whole to use their influence to try to either make some recommendations or influence a process or procedure that would be either advantageous to a firm that they have a pecuniary interest in or disadvantage a company that is their competitor. I submit to you that Kiewit was certainly a competitor of LHC. You can take a look at this and I'll bet these emails were sent to all of you. When staff reviewed the email from yesterday, I'll just tell you straight up, that they dispute the accuracy of that information. There is some indication that this is not original research by Commissioner Fisher but may be fed to her by some other company that maybe has an interest. I'll just tell you that staff has a lot of red lines in stuff that they disagree with on the facts and on the conclusions.

Staff can recommend and I can advise but it's really up to the Commission to police what's going on with your comments and your emails as individuals and as a corporate body. I submit to you that if Kiewit or frankly any contractor other than LHC or Schillinger gets ahold of this information and sees that this Commission is trying to influence MDT's technical proposal or their weighting and it turns out to be a benefit or detriment to somebody, it puts us on a reckless course and really a very precarious position of impacting the integrity of every decision you make and MDT's contracting processes. I'm not going to go through what I feel is pretty inflammatory in this email point by point, I think our Chief Operations Officer has a lot of comments about this but it's really not helpful for a Commissioner to make these allegations that MDT's scoring is unfair or it's scoring procedure is flawed. Those comments were made and are on the record and I'm saying that our staff disputes that and disputes that we have an agenda or that we're biased or that anything that we're doing is untoward. Every contractor including out-of-state contractors like Kiewit deserve our best efforts to keep our decisions above reproach. To that end, I'm going to turn this over to our Chief Operations Officer and will just reiterate that Jake is prepared to answer those questions that were raised at the February meeting but we're not going to go into this email.

Commissioner Skelton said I have a point of legal fact – the Commission has no authority to do any decision making or influence or ask to change the process. These processes are set in law by statutory regulations, the feds, the locals and we have no authority to do any of that. Is that correct? Val Wilson said it is true that the Commission does not have any oversight over MDT's technical review or its weighting. With regard to the processes and procedures, I wish I could get in the weeds with you, the one you need to talk to is Mr. Christensen. The Commission has no authority but it does have influence, so expending your influence in a manner that even appears to be improper is of concern to you as Commission members and of course to MDT. Commissioner Skelton said we want to keep our standards at the highest integrity we can. I sat on this Commission for over 10 years and have never seen anything improper done by any staff member or any Commissioner. We've always looked to the good of Montana, the good of our roads and the safety of our people. I think that needs to be our focus and it always has been and I'm fully convinced it always will be. Your leadership and your concerns and your oversight and how hard you work speaks totally for itself and I commend you on everything you do and everything you've done. It's been done with the highest integrity.

Commissioner Fisher said can I respond since I was just called unethical.
Commissioner Skelton said Kevin Christensen is going to speak first.

Kevin Christensen, Chief Operations Officer

I'll be brief. I was mostly concerned about setting the record straight because Commissioner Fisher's email was on the record. Val did that and that was my biggest concern. The only other thing I wanted to say is that Jake Goettle is going to give a presentation to address the issues that came up in the February meeting and then any other questions you have about alternative contracting, we're at your service.

Commissioner Fisher

Commissioner Fisher said the emails you got are a compilation of concerns that have been sent directly to me from contractors. Some of the data that contractors send to me, I have an answer for and I can say I don't think this is big deal, this is not an issue but for those that I don't have an answer for, I forward them in an email. That is a public email that I fully intend to public. I also gather information that I'm hearing from the public saying "why are we doing this kind of bidding". To the extent that anybody thinks that LHC gets some net benefit from this, actually they get a negative benefit. There is no benefit to LHC because they've been the successful bidder in at least two of these alternative contracting. I'm raising concerns that I'm

hearing from the general public and if this is not the forum for me to bring those concerns forward, then that's fine and I don't need to do that. The reason why I can raise these concerns is because I'm a member of the public too and I'm a taxpayer and my concern is that the taxpayers get the best value for their money. When I see discrepancies I want to point them out. I would also like a response to the emails and I've been told you can't respond to the emails so we'll do it in a public forum. That's why we asked for this to be an agenda item so there can be a discussion. I'm not saying get rid of alternative contracting, I'm asking "why are we doing it this way". In no way am I disparaging the staff, I would never do that. That is not my intent at all. I'm raising valid concerns that continue to be raised to me. So, yes there are companies in Denver who are wondering why the scoring is what it is and they've called me directly so I'm forwarding that concern. If you think that's somehow unethical, then I shouldn't be a member of the Commission nor should I be a taxpayer because that's my concern! We have zero control over this alternative bidding process and that's the way it is and you follow every statute. How you come to the decisions on how you score things is a matter of public knowledge, we should know why you're doing that. Why are you different than other states? There could be an entirely valid reason and that's why I'm raising the questions but to somehow assume that I'm unethical because I forward the concerns of my constituents to you or that I somehow net benefit, I get zero benefit. In fact, if I'm correct, LHC would lose these bids and that's who I'm related to as a member of LHC. This is negative for LHC and I'm sure the owner of LHC would not be particularly happy to know that I've questioned the alternative bid process when they've been the successful score. So to indicate in any way that I am unethical by asking these questions, is entirely offensive. I stand for this Commission. I stand for MDT. I've been a staunch supporter of MDT my entire career and to indicate that there's metadata from information that I took from concerns from constituents and that's somehow indicates that I'm unethical because I'm forwarding their concerns because I don't have the answer in support of MDT and I'm trying to get it, that's unethical? I would submit to you that you're unethical! It's bullshit!

Jake Goettle

As Val and Kevin both talked about I'm prepared to answer some of the questions that were presented in the February 20th Commission Meeting. Just to reiterate and Val already mentioned these, the three questions that were brought up in that Commission meeting: (1) throwing out the high and low score from the Technical Review Committee; (2) discussing the scoring tools that we use in design build and CMGC compared to other states and the nation, and then any mechanisms that we have or the department has or the taxpayers have to review our processes; and (3) make sure our processes are appropriate.

Throwing out the high and low score

We actually did look at this in 2010, I was the head of the program and this was discussed with several leaders in the department – is this something we want to pursue, throwing out that high and low score to get rid of any discrepancy that's seen. We determined at that time that it was inappropriate to do for one really valid reason. I touched on it a little bit but that Technical Review Committee is very specifically selected to review those proposals and its project specific. So a bridge project has bridge engineers, geo-tech concerns has a geo-tech engineer on that committee, environmental concerns has environmental engineers or specialists on the committee. They review those proposals with their expertise in mind. They score the entire proposal but they really focus on their expertise. So they go through the scoring process, each of those individuals score it on their own, and then come together as a committee. Each committee member talks about what they saw in that proposal – what was good, what was bad, responsiveness is discussed. So those expertise have to be considered. We don't want to throw out that expertise. If a proposal has an environmental concern in it and that environmental person picks up on it, we want

that score to reflect that. It has to be part of that final score, that final selection process. I see it as very similar to the teams that our design build put together; they have all those same experts on their team to complete those portions of the proposal for them. In all those pieces you'll see the design build teams consist of the instructor, the engineer, a geo-tech company in some instances, and a bridge engineer in some instances. So we really want to match that and again, we don't want to throw out that good or bad score just because it looks like an outlier. It really speaks to the merits of a proposal if it's a high score and it speaks to the concerns of a proposal if it's a low score.

That team reviews it and the one we just awarded is a good example. They review it independently and then come together to develop a consensus score, a final score for each proposal and it's critical that they do that before we open bids because we don't consider price in that technical aspect of the proposal. Then there is a higher level committee that takes a look at it. They don't review the proposals but they look at those scores to make sure there is consistency in what those scorers are looking at. The Technical Review Committee presents their scores to the Selection Committee. The Selection Committee – the construction engineer is the chair, we have the District Administrator of where that project is located on that committee, generally the District Construction Engineer is on that committee, and then there is usually a high level Bureau Chief that's another member of that committee. Also the Construction Contracting Bureau Chief is on the committee as a non-scoring member. Their purpose is to make sure we're following our process – kind of an oversight to make sure the Selection Committee follows their process. Then if it's a PODI (project of division interest) project, then FHWA is a non-voting member on that committee as well. FHWA has a few projects a year that are projects of division interest and they hold a more active role in reviewing those projects. So if it's one of those, then they are on the committee as a non-scoring member to make sure we're following the process.

I hope that answers it. We have considered it. Commissioner Hope said when you look at those high-low scores, typically what you see, is there a wide variance between the low and the high? Jake Goettle said no, the scoring criteria explains not only what we're scoring but how they score it. It says if this element is superior it is 9-10, if it's good then it's 7.5-9, if it's less than 3.9 it is considered non-responsive. In some way it failed to meet the requirements of the RFP. Commissioner Hope said to me an outlier is way out there. Even if it's a high score, it might not be an outlier and if it's a low score, it might not be an outlier if it's within a certain percentage of the other scores. I wouldn't consider that an outlier in my personal opinion. Is there a wide variety in those scorings? Jake Goettle said no not generally. That consensus scoring is what that is meant for – when they score them individually somebody may score high or low and be somewhat of an outlier. When they come together as a committee, they debate the merits of that back and forth and they can change scores in that meeting because if you see something that's a failure or a really low score on this proposal and I missed it or I don't understand that aspect since I don't have that expertise, then you can tell me why and discuss that with me as another scoring member and then I'll adjust my score based on that discussion. They generally tighten up following that meeting, that consensus meeting.

Kevin Christensen said I might add I've been on scoring committees through the years and my experience is that committee is deadly serious about that job. They understand the implications of what they're doing. As a matter of fact in one of them a couple of people almost came to blows over the differences in their scores and why each thought they were right. I just want to throw that out there that our folks take it very seriously. Commissioner Skelton said when you do this scoring, and it's clear to me that you have a lot of discussion and you can change or influence each other's decisions by your engineer's knowledge that there are checks and balances in everything we do with this. If there is somebody who is out to lunch, then somebody else can say "no, this is where it is". The group comes together as a team to do the

best they can do for this scoring project. Is that correct? Jake Goettle said that is correct. Really that is why we have a pretty robust team of six to ten members generally and they do kind of police themselves and then having the second committee oversee it. When Kevin chaired that committee he more than once told us to go back and try again. Go discuss those scores again because we have too big of a spread between some of those scores and we didn't have a good explanation as to why we had a big spread. That's another other side – they didn't approve those scores so we have to go back as the Technical Review Committee and re-discuss and come to a better consensus. Commissioner Skelton said when you go back a second time, can you enter in new information? Like if the Oversight Committee gives it back to you and says this is isn't working for us, then do you have the opportunity to say we have this information? Can you bring in new data? Jake Goettle said we don't bring in new data because we're just scoring what has been submitted. We have pulled in other subject matter experts if the team is at an impasse, say there's an issue where they don't have the expertise on the team, they sometimes pull in another subject matter expert to discuss that. Then they leave and the team discusses that and finalizes their scores based on that. Commissioner Skelton said then you can request additional information. Jake said yes.

The Scoring Process

How do we do it? Two key things we use: first, DBIA, Design Build Institute of America, they issue the best practices model. DBIA is a national company that consists of constructors, engineers, architects, owners. It's a national group with 14 regions with over 5,000 members and are the national expert on design build. Montana is a member of DBIA. They've been doing this for 25+ years. They take the best practices from around the nation and they compile it into a best practices document called "Design Build Done Right." We model after that as much as we can. It's not as detailed as we get; it's a little more vague for best practices. A few of the standards it sets is the "best value scoring". In that document one of the key points is it recommends the best practice of utilizing a best value selection process and to factor technical proposal elements higher than the price proposal. That's why we go through the technical proposal first and we don't consider price at all and then we look at price so that it doesn't factor into our discussion. We don't want the technical merits to be influenced by the cost and then we look at cost later. That's also why we do this higher score for the technical side versus the bid.

The second piece as to why we do this is since the inception of our program ... just like CMGC our design build project started in a pilot program. We did three pilot projects, we got approval from the Legislature for those three to use design build. It was new to us and we learned on every project. We wanted to make sure that input from the industry was key to us growing our program just same as CMGC. On every single project we encourage every proposer to debrief with us. That is for us to give them feedback on what we saw in their proposals and what we didn't see, what was good and what was bad, and how they could improve next time. We ask them questions about the design build process, is it good, do you recommend changes, and what can we do better. So from day one we've been doing these debriefing meetings. We've had many of them. Some of them are not very fun and not super comfortable. The benefit of it is from day one our program has improved and a lot of that improvement is based on industry input. The 75/25, we change that formula based on the complexity of the project, not every project has the technical aspect as high as the bid so we change that formula based on the project specific nature. That request came from industry. The low bid is not always the best value and the industry wanted to protect that, they wanted to make sure the technical merits of their proposal and the amount of work they put into those proposals isn't undermined by a low bid at the end. The request from the industry was to score that technical aspect of the proposal higher than the bid price.

Commissioner Skelton said in doing all this process you really are taking public input, so to speak, from industry, contractors, engineers, and people who are totally qualified on whatever specific project it is whether it be bridges or other. Jake Goettle said yes. Commissioner Jergeson said typically when the Legislature passes a law they don't cover any of the details in the statute but delegate to the agency, the board, or somebody to adopt rules. Is that the case with either of these statutes and was the delegation to the Department or was it to the Commission to adopt the rules and the policies and procedures by which these new programs occur? Maybe that's a question for our attorney. Jake Goettle said I don't know Montana law for design build verbatim but I'm fairly confident that the decision to award projects in design build is under the Commission's authority and the state law says that development of the guidelines is the department's responsibility. Val Wilson said I don't have the statute in front of me but I know Kevin was very instrumental in getting the legislation passed. It is my understanding that Jake is correct and the Commission still has authority to select, prioritize and award just like any other project. MDT is authorized to determine the methods and means including the technical reviews and the weighting. Kevin Christensen said that was his understanding as well. To add a little perspective, it's no small task to develop our process. We didn't reinvent the wheel of course, we looked at what other states were doing and DBIA. In the case of CMGC we had a peer exchange with Federal Highways and three-four other states came in and talked to us about how they do CMGC. Like Jake said, through those processes we adopted the best practices and that is how our process was developed.

Commissioner Jergeson said that didn't really answer my question. As a follow-up, when each of these laws were adopted and you set about designing the policies and process, did you engage the Commission at the time at all about how the process and policies work? Did the Commission raise any questions about making sure we ensure the integrity of the process and the best value for the money, or were they left out and then simply presented with the program and the first project that you brought forward to the Commission under the design build? Kevin Christensen said I wasn't involved in the inception of design build. I was heavily involved in CMGC and I know that we came to the Commission with a concept and in fact we gave a presentation of how this process worked, what the benefits were, and what our course of action was going to be to implement the program. I assume we did that with design build as well although I can't speak intelligently to it; I didn't come into headquarters until 2006 and the design build stuff happened in 2005.

Jake Goettle said Kevin was right on with CMGC. Both programs were developed from other states, we borrowed their processes and modified them to work for Montana. We did those working very closely with our industry partners. We worked with MCA and David Smith, the engineering community, FHWA was heavily involved with developing both guidelines and then high level staff from the department. Kevin said that is an important point, we engaged the Montana Contractors Association, ACEC, consulting firms, and they were part of the process and part of the group that built our program. It was based on input from the industry because we wanted it to work for them as well and we needed to have buy-in from them if we were going to get it through the Legislature. So once we did that and we had a straw-man of what our process was going to look like based on input from the contractors and the consultants, then when we went to the Legislature, they were standing at the podium in the hearings advocating for this. That was really critical to have our partners at the table testify to the committee that this was a good thing.

Commissioner Jergeson said the Commissioners are appointed by the Governor and then have to stand for confirmation by the Senate. Before the new constitution, the Highway Commission was the Director of the Department, like the Board of Livestock is today. That was changed so that there is a Director appointed by the Governor but the Transportation Commission was determined to be, and it is in the law, as a quasi-judicial board which means there is a high level of decision making

that needs to be afforded to this board than it seems to appear on some of these things. So when our legal person says you don't have the authority to make these kind of decisions, I think that is probably not advisable to make that kind of a blanket statement. I think there is oversight authority on this board. And because they ask questions and want to have answers, even the suggestion that asking questions on why a score is way out of distance from all the other scores, that there is some agenda there. I don't think that's a question the department ought to get defensive about and react defensively the way some have. I think there are professionals in any particular category of all the various professions we have to deal with that have disagreements and that look at the same set of data and come up with different decisions. That doesn't mean because they have a difference of opinion that there's one of them having some agenda or corrupt intent in the process. They are simply seeing things from a different point of view and you don't need to get defensive about a Commissioner or anybody else asking questions and wanting to understand what generated that difference. Whether it is a difference between engineers in this department and engineers at the contractor level or for anything else, there is no need because Commissioners want to ask questions and want to understand why those two professionals saw and calculated and came up with different answers from one another. The department and people in the department don't need to get defensive about those kind of questions and wanting to understand that difference. It seems that there is some part of that that's ... I've had issues and started out with my long dissertation about things I didn't understand but frankly was told we'll discuss that in a Director's Agenda Item. This discussion we're having today where none of us can make a motion that we want to change something or do something. We're finding out it's really difficult for a Commissioner, having received input from the public on a number of things, to get something on the Agenda that somebody else apparently doesn't want to have as an Agenda Item. I don't know what we have to do to get there. Most usually we're told the Commission doesn't have any authority for that. I think that's at the crux of our problem here. I think Jake made a very professional presentation here in answering questions and I appreciate that.

Dwane Kailey said I've been working for the Commission as the Chief Engineer for 12 years. I'll tell you I've never ever bet against the Commission asking questions. I actually celebrate it. As Kevin knows as well as Jake and Dustin, I love making changes, I love improving processes and our procedures, and it comes from questions from you, the public, the contractors, my own staff – that's how we find issues and we change those issues. Where you see resistance, and you and I have talked about this, is when it appears that the Commissioners or people are starting to question the ethics or the quality of our staff. I will tell you it's my nature to protect my staff, they work very hard and get very few thank you's because they are public servants. They are very dedicated, hard-working individuals. When I do get emails or questions that question the integrity of my staff, I do get defensive. I'll freely admit it. I do welcome questions. My only request is to please keep the integrity of my staff at the highest level and don't question it because they are stellar employees and they work very hard and don't get paid what they would make out in the private world. They do most of it without very many thank you's. Again I welcome the questions, I want the questions but don't question my staff.

Commissioner Hope said I appreciate you sticking up for your staff but if you look at what's going on in the country today, some police officer's integrity wasn't questioned and we ended up with a guy getting killed. So if we feel the integrity of the staff is wrong, I think we have every right to question that. We could be wrong to when we question that, okay, and you have every right to defend that but to tell us we can't question the integrity of a staff member, I have a real problem with that personally. I appreciate you sticking up for your staff and maybe how we word it should be different but if we don't question the integrity of bad actors, then we are not doing our job as a board. I feel where you're coming from Dwane, you can stick up for your staff but we also have to have the ability to question their integrity when we think it's wrong and we have to defend that. I love the comment that there's

almost been fist-fights in those meeting because that shows passion with people defending what they're doing. I completely disagree that we can't question the integrity of somebody. We should do it morally and ethically when we do that. In my own businesses, I don't get the feedback that I need from my staff because my staff are afraid to tell me what I should hear. That's why we hire a company to come in and consultants to come to tell me when I'm wrong because my staff sometimes is afraid to tell me I'm wrong. I can be overbearing in how I operate. It's a hard line and a fine line to balance but I do appreciate your passion for your staff as well and I want to make that perfectly clear.

Kevin Christensen said thank you for those comments. I just want to throw out that with alternative contracting, particularly CMGC and Design Build, it's an open book. With the scoring and stuff like that, we have to follow the process but when we're done, those books are open. Anybody can come and look at how we scored even the scores that we changed, we have notes and it's all open to the public. We know that and we're ready to stand here and defend the decisions that we made and have those discussions and we do. The last part, and Jake mentioned it, is a lot of the changes we've made to our process have come from those debriefings and other contractors giving us input on how the process was for them.

Commissioner Hope said I agree 100% with where we're going with CMGC, I think it's an important thing. I think change is hard for everybody. I think ultimately if contractors will internalize that maybe they need to get better and maybe the department needs to get better. If both sides get better, we get a better project ultimately and I think that's the goal. From my experience on the development side, I think this is the right process. I'm not a fan of low bidder and I watch every dollar I spend in my construction projects. I commend the thought process. There's going to be issues as you go through this and change is tough no matter what you do. I think ultimately everybody will come out better in the process if people will listen and talk to each other. Kevin Christensen said I do too. Keep in mind CMGC is in its infancy with MDT. Our first construction project is underway. By the way that project is unbelievable, we didn't really know how to the approach that as an agency to design it because it was such a complicated project and there were so many means and methods that other contractors had and we didn't know what to do. It was an ideal candidate for CMGC and we're finding out that it's really paying dividends for us. I went out on that job a couple of weeks ago and I've never seen anything like it in my career. They got the deck off that bridge in two or three days, they got the new deck put back on in a week. When I was out there, there was a 40-man crew and for every four men there's a foreman. I thought something was strange and it finally struck me that nobody was talking, no one was standing around and no one was talking to each other, every group of four people had a job to do and they knew what it was. They were working from four a.m. to midnight as efficiently as I've ever seen a contractor work in my life. That's what CMGC brings to the table, as well as cost certainty. They had a plan, they developed it with the designers and in this case it's coming off without a hitch; it's a very impressive project. Commissioner Skelton said that is awesome information. Thank you.

Commissioner Sansaver said in listening to it all and I guess I've really haven't delved into it that much with the email issues but I certainly understand the sensitivity of that. I understand the feelings of Commissioner Fisher being associated with part of this and how sensitive it is to have to stay away from issues when you're representing a group of people. I've sat on many boards and I have two brothers who are general contractors, and I had to recuse myself from a situation, knowing that some of the things that were going on weren't right and I would have loved to be able to have input into that. I had to trust in the system, having to trust in my other Commissioners that I sat on those boards with that they were going to make the right decisions and having to trust in staff. I truly believe we have a wonderful staff at MDT and I certainly appreciate all the work. One thing I always tell people and I had a board meeting yesterday before I came here on a multi-million dollar development,

and I told them we're only here in person once a month, we have to trust entirely the professionals we're working with. We have to make the best possible decisions as a Commission based off the information that you give us. I feel totally and entirely comfortable with the work that you guys do. I feel bad about the situation with Commissioner Fisher and I understand where she's coming from but I also really support the law of the State of Montana. If you're infringing upon that as a Commissioner, as a board member, you need to be aware of that. Obviously there's other things that have gone on here that I didn't delve into with some of the emails so I can't speak to that but I do appreciate where Commissioner Fisher is coming from and the association she has to both her constituents up in her district and to the company she is associated with. I also support our legal staff here and the decisions you've made. I do understand where Commissioner Fisher is coming from.

Commissioner Hope said I think it is fully in your realm to question our integrity too; it's a two way street. I want to make that very clear. Commissioner Skelton said that is true. Director Tooley said prior to when I came to the department I actually looked through some of these things on line and what I saw there I did not like. I saw a Commission, at that time in the past, that was really not engaged to this level and that might have been partly because of prior directors not allowing or wanting that frankly. That's is not what I wanted because I think the danger of an unengaged Commission is a department that will lose their way and could potentially lose their integrity. So what I searched for and asked the Governor for were people that would come on board and actually hold us accountable, to ask the hard questions. I will never forget the first day that John Cobb was on the Commission with ten thousand questions and watch Kevin Christensen's chin on the table because this had never happened before. I'll say that even with the difficulties and sometimes we irritate each other at times but that this is exactly the kind of Commission that I was looking for. You do good work, we get contracts out the door, we hold each other accountable even when it's uncomfortable but I think we're delivering the service to the people of the State of Montana and I appreciate what you all do here for us and for the people.

Agenda Item No. 14: Project Change Orders March & April, 2020

Dwane Kailey presented the Project Change Orders for March & April, 2020 to the Commission. They are presented for your review. If you have any questions, please feel free to ask.

Commissioner Jergeson asked if the change orders show up in the numbers in the completion so that those two certificates of completion that had such difference in the bid amount and the final amount, does all that change show up somewhere in these change order documents. Are these change orders reflected over here in these tables now or will we see these reflected at the next meeting. Dwane said yes the change order will then get added into the project cost. When you approve a certificate of completion, the main reason you're seeing that big change in those costs is because we have done change orders to address additional work. The question about what you see now and then see the certificate next month – yes, no and maybe. Keep in mind that some of these change orders may be early on in the project, some may be in the middle of the project, some of them may be at completion. For example, a lot of times you will see an adjustment in traffic control and that is usually done at the end of the project to adjust it up to the actual quantity that we completed. So it is likely that you could see the certificate of completion on a project like that next month. Most of the others, you won't because they are in process of still working on that job. It could be months or a year before that job is actually done.

Commissioner Jergeson said theoretically the certificates of completion, the Commission could approve them but can we disapprove any one of them if there was

something wrong? Would we have no basis or authority because you guys approved this and we were given this as information? Dwane said I have not researched the law on this recently but I believe we present them to approve, so ergo it would be within your authority to not approve but I'm not sure what we would do if you don't approve because I've never had to deal with it. I don't know if that would put federal aid at risk. Val could research it and respond at the next meeting if you'd like. In 12 years, I've never seen it.

Val Wilson said of course you have the authority to not approve the certificates of completion but I don't know what the ramifications are, we haven't researched that. I know the date of the certificate of completion starts another series of statutes of limitations for lawsuits and claims and other issues. If you have question about why that slide over in Mile City cost an extra \$15 million, absolutely we would bring information in and Jake could explain to you every bit of that project that ran those extra costs and why the project manager found that it was appropriate to negotiate those change orders. Dwane said one of the big issues with certificates of completion is that once you approve it that is when we release the bond and the contractor. If you chose not to approve that, it could affect the contractor's bonding ability. Kevin Christensen said I suspect there would be a discussion about federal participation if the Commission chose not to approve a certificate of completion.

Informational

Agenda Item No. 15: Letting Lists

Dwane Kailey presented the Letting Lists for the months of May through October to the Commission. They are submitted for your information and review. If you have any questions, please feel free to ask.

Commissioner Jergeson asked why the May 14th letting list wasn't taken up at the April meeting. Why is it taken up after it's already happened? Dwane said it is a timing issue. We produce this and get it to Lori to produce the packet for you six weeks ahead of time, so the May 4th bidding hadn't happened when we produced the packet. You did review it at your last meeting and the meeting before that and the meeting before that. You've seen it. Again it is a timing issue and if you want it to pull it out we can do that. Keep in mind that we submitted this to Lori to go to print to get sent to you all before the May 14th letting. It's a timing issue.

Informational

Agenda Item No. 16: Liquidated Damages

Dwane Kailey presented the Liquidated Damages to the Commission. We do have one project with liquidated damages. Hobson East, the contractor was Wickens Construction, they had two days at \$6,428.00 and they did not dispute those charges. There is no action for you unless you wish to take one.

Informational

Agenda Item No. 17: EEO Non-Discrimination Training

MDT presented the EEO Non-Discrimination Training to the Commission.

Next Commission Meeting

The next Commission Conference Calls were scheduled for June 30, 2020 and July 28, 2020. The next Commission Meeting was scheduled for August 27, 2020.

Adjourned

Meeting Adjourned

Commissioner Skelton, Chairman
Montana Transportation Commission

Mike Tooley, Director
Montana Department of Transportation

Lori K. Ryan, Secretary
Montana Transportation Commission