

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL HIGHWAY ADMINISTRATION,  
THE MONTANA DEPARTMENT OF TRANSPORTATION,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
AND  
THE MONTANA STATE HISTORIC PRESERVATION OFFICE  
REGARDING HISTORIC ROADS AND BRIDGES  
AFFECTED BY MONTANA DEPARTMENT OF TRANSPORTATION  
UNDERTAKINGS IN MONTANA**

WHEREAS, the Federal Highway Administration, Montana Division (FHWA), proposes to make Federal funding available to the Montana Department of Transportation (MDT) for that agency's on-going program to construct or rehabilitate highways and bridges; and

WHEREAS, the FHWA has determined that this federally-assisted program may have an effect upon a certain class of properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) and has consulted with the Advisory Council on Historic Preservation (Council) and the Montana State Historic Preservation Office (SHPO) pursuant to Section 800.14 of the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the FHWA and the MDT developed an Historic Preservation Plan (HPP) regarding historic roads and bridges in 1997 and that document was subject to review under 36 CFR 800.14 and was adopted by FHWA, SHPO, and the Council and implemented through Programmatic Agreements in 1997 and 2001 with amendments in 1999 and 2003, respectively; and

WHEREAS, the FHWA and MDT in consultation with SHPO has re-evaluated the 1997 HPP and the 1997 and 2001 Programmatic Agreements and their amendments to determine what products and actions have been completed, have been effective, or should be dispensed, revised or restated in a new Programmatic Agreement; and

WHEREAS, this Programmatic Agreement (Agreement) shall supercede all of the previous Programmatic Agreements and their amendments regarding undertakings affecting historic roads and bridges in Montana; and

WHEREAS, the MDT participated in the consultation and has been invited to concur in this Agreement; and

WHEREAS, all references to 36 CFR 800 within this Agreement are to the Council's revised regulations, effective August 5, 2004;

NOW THEREFORE, the FHWA, the MDT, the Council, and the Montana SHPO agree that the Montana historic roads and bridges program addressed in this Agreement shall be

administered in accordance with the following stipulations to satisfy the FHWA's Section 106 responsibility for all individual undertakings of the program.

### **Stipulations**

The FHWA will ensure that the following measures are carried out:

**1. MONTANA DEPARTMENT OF TRANSPORTATION AND MONTANA STATE HISTORIC PRESERVATION OFFICE COOPERATION**

- A. MDT and SHPO will strive to work cooperatively in all matters concerning the identification, evaluation and treatment of historic roads and bridges.
- B. MDT will routinely encourage, invite, and support SHPO participation in on-site field visits and meetings for MDT undertakings involving historic roads and bridges.
- C. SHPO will routinely provide constructive reviews and comments to all written requests for consultation from MDT and will routinely communicate, advise and meet with MDT to share information and seek to resolve issues pertaining to historic roads and bridges before they arise.

**2. FOR UNDERTAKINGS INVOLVING HISTORIC ROADS**

- A) This Agreement will apply to all historic roads constructed in Montana after 1859.

***B) Montana Historic Highway Program***

For those roads built after 1859 under the jurisdiction of the MDT, the following program will be established:

- 1) The MDT Environmental Services Bureau in consultation with SHPO will compile a list of a minimum of 12 (twelve) historic road segments in Montana that are especially significant for their historic associations and/or engineering and associated features (i.e. bridges, roadside architecture, proximity to abandoned segments of historic road, etc.) for inclusion in a Montana Historic Highway Program.
  - a) The MDT Environmental Services Bureau historian, in consultation with SHPO, will identify proposed segments in a draft list for inclusion in this program by June 30, 2007.
  - b) A segment is defined as a recognizable section of roadway that retains a significant portion of its original design features, alignment and associated features (i.e. roadside architecture,



bridges, etc.) to meet the criteria for inclusion in the National Register of Historic Places.

- c) The draft list will be distributed to the FHWA, MDT Highways and Planning Division Administrators, MDT District Administrators, and the MDT Highways Bureau for comment.
  - d) A final list with map (to be included as **Attachment 1** to this Agreement) will be mutually approved by MDT and SHPO by December 31, 2007 for inclusion in the Montana Historic Highway Program to be implemented by this Agreement.
- 2) If not already inventoried and evaluated and prior to any undertaking with the potential to impact the road segments identified above, the MDT will record each identified historic road segment in the Montana Historic Highway Program as a minimally defined linear site and assign it Smithsonian trinomial number. The MDT will evaluate the historic significance and integrity of the road in consultation with SHPO, pursuant to 36 CFR 800.4.
- 3) For the historic road segments in the Montana Historic Highway Program, MDT will seek whenever prudent and feasible to preserve or incorporate into the design of all proposed undertakings as many of the historic features associated with the designated roadway as is possible based on current American Association of State Highway and Transportation Officials (AASHTO) standards. Specifically, MDT will incorporate preservation and context sensitive design early in the planning process, including (but not limited to):
- a) MDT will consider the historic road and features associated with it under the guidelines delineated in *Saving Historic Roads: Design & Policy Guidelines* (National Trust for Historic Preservation, 1998).
  - b) MDT will ensure that when a segment of designated historic roadway is programmed for widening or reconstruction, the MDT Preconstruction Bureau will notify the MDT Environmental Services Bureau prior to the Preliminary Field Review for early consideration for preservation of historic values.
  - c) MDT will use design exceptions as necessary and allowable to minimize impacts to historic highway features that may be located within the right-of-way (R/W) or clear zone.
  - d) MDT will integrate existing historic road features into changes in the proposed roadway. If necessary and feasible to move features, they will be relocated to correspond to their original context (i.e. concrete R/W markers and retaining walls).
  - e) MDT will coordinate historic preservation with MDT's mandate to provide safe and efficient roadways for the traveling public.
- 4) For all undertakings involving roads in the Montana Historic Highway Program, MDT will explicitly identify the roads as part of the Montana

Historic Highway Program and invite the public in the early stages of planning to comment upon the potential for impact to historic values. Public comments may be solicited through regular MDT procedures as part of the National Environmental Policy Act (NEPA) process as specified in 36 CFR 800.8 (a). MDT will document public comment on impacts to historic values.

- 5) For all undertakings involving roads in the Montana Historic Highway Program, MDT will explicitly identify the roads as part of the Montana Historic Highway Program, submit documentation including description, public comment and assessment of effect; and invite SHPO to comment pursuant to 36CFR800.5 upon the potential for impact to historic values. SHPO will have 30 days to respond.
  - 6) If MDT, in consultation with SHPO, determines that a road in the Montana Historic Highway Program will be adversely affected pursuant to the criteria as defined in 36 CFR 800.5(a), FHWA and MDT will consult with the Council, SHPO and any other consulting parties to resolve the adverse effect pursuant to 36 CFR 800.6-7, including development of a Memorandum of Agreement (MOA), as necessary.
- C) For undertakings involving all other historic roads *not* included as part of the Montana Historic Highway Program, the following procedures will apply:
- 1) The MDT and FHWA will comply with 36 CFR 800.3-6 for consideration and consultation on historic properties in the Area of Potential Effect (APE) other than historic roads.
  - 2) For the historic roads, MDT will identify, record, and assign Smithsonian trinomial site numbers to historic-age (> 50 years old) roads or road segments located within the Area of Potential Effect (APE) of MDT's undertakings.
  - 3) MDT in consultation with SHPO will seek to avoid impacts to all intact historic features associated with the historic-age roads.
  - 4) If MDT and SHPO determine that a particular road contains historically significant features that are eligible for listing in the National Register of Historic Places on a *statewide* or *national* level, MDT will consult with SHPO to develop and implement a plan to avoid or incorporate the features into the agency's undertaking in a manner that preserves their historical significance and integrity.

### 3. FOR UNDERTAKINGS INVOLVING HISTORIC BRIDGES



- A) MDT will comply with 36 CFR 800.4 with regard to identifying and evaluating, in consultation with SHPO, the National Register eligibility of historic-age (>50 years old) bridges.
1. MDT will identify, record, and obtain Smithsonian trinomial site numbers from the state Site Records Office, The University of Montana, for all bridges to be evaluated for eligibility to the NRHP.
  2. MDT will consider national, state, and local levels of significance in determining the eligibility of bridges to the NRHP.
- B) For NRHP-eligible bridges that may be impacted by MDT undertakings, including proposed bridge replacement, FHWA and MDT will consider preservation in place and historic bridge rehabilitation alternatives early and thoroughly in the planning and public comment process.
1. Where applicable, FHWA and MDT will encourage use of Community Transportation Enhancement Program (CTEP) and Treasure State Endowment Program (TSEP) funds for the preservation and rehabilitation of NRHP-eligible bridges rather than bridge demolition or removal.
- C) For all NRHP-eligible bridges that MDT concludes, after planning and public comment, that the bridge will be affected by an undertaking, (including those considered for the Montana Adopt-A-Bridge Program or the Montana Historic Bridge Rehabilitation Program [see below Stipulation 3E and 3F] ), MDT will implement the following actions:
1. MDT will notify SHPO and any other consulting parties and invite their comment on the undertaking. SHPO and other consulting parties shall have at least 30 days to comment. MDT will take into consideration the comments of SHPO and other consulting parties in implementing the undertaking
  2. MDT will consult with the National Park Service's Historic American Engineering Record (HAER) to determine the level of documentation necessary and appropriate for recording the bridge.
    - A. If accepted by HAER for official record-keeping, MDT will submit original documentation to HAER and copies to the SHPO, The University of Montana Site Records Office (as a site update), the Montana State University-Bozeman, interested local historical societies and/or museums, and new owners, as applicable (i.e., Montana Adopt-A-Bridge Program).
    - B. If not accepted by HAER for official record-keeping, MDT will submit original documentation to SHPO and copies to The University of Montana Site Records Office (as a site update),

interested local historical societies and/or museums, and new owners, as applicable (i.e., Montana Adopt-A-Bridge Program).

3. As allowable and appropriate, MDT will salvage historic components (i.e. trusses, masonry abutment walls, guardrails, etc. ) for reuse on new bridges and/or include structural features in the design of new bridges that closely approximate historic structural components and design.

D) For all bridges determined to be not NRHP eligible that will be affected by a MDT undertaking, MDT will update the historic property record (site form) to reflect the impact of the undertaking.

1. Updated information, including before and after photographs, will be submitted to The University of Montana Site Records Office as a site update.

**E) *Montana Adopt-A-Bridge Program***

1. MDT will initiate and promote a Montana Adopt-A-Bridge program to find new locations, uses and/or owners for certain historic bridges that are NRHP eligible and have been designated for replacement or demolition because rehabilitation and preservation in-place is not feasible.
2. The Montana Adopt-A-Bridge program will encompass all historic truss and steel girder bridges with a structural rating of three (3) or above. At its discretion, MDT may also consider other bridges for adoption.
3. A determination of suitability of an historic truss or steel girder bridge for inclusion in the Montana Adopt-A-Bridge program will be made during the preliminary field review of the proposed project by the appropriate District Administrator, in consultation with the MDT Bridge Bureau and the MDT's Environmental Services Bureau historian.
  - a. The MDT Bridge Bureau's recommendation will be based on the structural condition of the bridge and its suitability for relocation.
  - b. The MDT Environmental Services Bureau historian's recommendation will be based on the bridge's historic and/or structural significance.
  - c. MDT will notify SHPO of the bridge's selection or non-selection for the Montana Adopt-A-Bridge Program and given fifteen (15) calendar days to comment.
4. MDT will prepare and distribute a brochure that provides information about the Montana Adopt-A-Bridge program to the general public.
  - a. The brochure will be available through the MDT headquarters and each of the five district offices. Copies of the brochure will also be provided to the 56 Montana counties. It will also be distributed at public hearings where bridges deemed eligible for the program are discussed.



- b. The brochure will include specific guidance on the issue of legal liability and insurance.
- 5. If deemed suitable for the Montana Adopt-A-Bridge Program, the bridge will be advertised for adoption in the local newspapers, radio public service announcements (PSAs), and on the MDT's Internet website.
  - a. The MDT Environmental Services Bureau historian will prepare the advertisement and submit it to the appropriate newspaper(s) at least ninety (90) days before the scheduled ready date for the project.
  - b. MDT will offer potential owners the demolition cost of the bridge as an incentive to adopt the historic bridge.
    - (i). If the bridge will be adopted and relocated, then the demolition money may be applied to the reimbursement for the move.
    - (ii). If the bridge will be adopted and left in-place, then the money must be applied to the restoration, rehabilitation or insurance liability for the historic bridge.
    - (iii). Where possible, MDT will encourage and give preference to the adoption of bridges in-place.
- 6. Upon receipt of and consideration of response(s), MDT will determine the disposition of bridges in the Montana Adopt-A-Bridge Program as follows:
  - a. The MDT Bridge Bureau will contact all interested new owners of the historic bridge and request they provide information in writing regarding: the proposed new or in-place location; the intended use of the bridge when adopted; and the ability to assume the liability and responsibility for the bridge.
    - (i) If it is determined that a potential recipient of an historic bridge intends to demolish it for its value as scrap metal, then he/she will be removed from further consideration.
  - b. An FHWA representative, the appropriate MDT District Administrator, the Chief Bridge Engineer, the MDT attorney and the MDT Environmental Services Bureau historian will together select a new owner among viable interested owners based on the written information provided and using criteria described in **Attachment 2** to this Agreement.
  - c. The selected new owner (2nd Party) must agree, in writing, to maintain the bridge and the features that give it its historical significance and assume the liability and responsibility for the bridge once he/she has taken possession of the structure. MDT and/or the county in which the bridge resides or is taken will not be held liable for the bridge once ownership has been transferred to the 2nd Party. A sample copy of the agreement is included as **Attachment 3** to this Agreement.
    - (i) No demolition funds will be provided to the 2nd Party until they have assumed the liability and responsibility for the bridge.
  - d. The MDT Environmental Services Bureau historian will conduct HAER-level documentation of the bridge prior to its adoption (see above, Stipulation 3C).

- e. If the adopted bridge will be relocated, the 2nd Party must remove the bridge from the construction site within 30 days of notification by the MDT Project Manager. The 2nd Party will be provided with the demolition funds once the MDT Bridge Bureau has been notified by the MDT Project Manager that the bridge has been removed from the construction site and relocated.
  - f. If the abutments are determined historically significant, they will be left in place if practicable. MDT will make this determination on a case-by-case basis.
  - g. MDT will ensure that the 2nd Party must maintain the bridge and the features that contribute to its historical significance for a period of no less than 10 years, to be established in the agreement between the 2<sup>nd</sup> Party and the MDT.
  - h. The 2nd party must assume all future legal and financial responsibility for the bridge, holding MDT harmless in any liability action.
  - i. The 2nd Party will permit access to the relocated bridge by the MDT Environmental Services Bureau historian for up to ten years for monitoring and follow-up documentation purposes. MDT will notify the 2nd Party of any inspection of the bridge ten working days before the visit. MDT shall invite SHPO to participate.
  - j. If the adopted bridge is to be left in-place, the 2nd Party will be provided the demolition funds once documentation detailing plans for restoration or rehabilitation has been received and approved by the MDT District Administrator, the MDT Bridge Bureau and the MDT Environmental Services Bureau historian and an agreement to this effect has been executed. The MDT may consult with the SHPO regarding the plans for restoration or rehabilitation. Rehabilitation shall meet the *Secretary of the Interior's Standards and Guidelines for Rehabilitation* (36 CFR 67).
    - (i) MDT will give the 2<sup>nd</sup> party a copy of the HAER-level documentation and also specific guidance for historic preservation of the bridge.
    - (ii). MDT will ensure that the 2nd Party must maintain the bridge and the features that contribute to its historical significance for a period of no less than 10 years, to be established in the agreement between the 2<sup>nd</sup> Party and the MDT.
  - k. The 2nd Party will be responsible for securing any and all necessary permits and easements from appropriate federal and state agencies (i.e. Army Corps of Engineers, Montana Department of Natural Resources and Conservation, etc.), as applicable for the relocation or preservation in-place of an adopted bridge.
7. If no interested new owners respond or no suitable owners are identified, MDT may proceed with the replacement and demolition of the bridge after following the procedures established in Stipulation 3C above.
  8. As part of the biennial Agreement implementation report (Stipulation 5), the success of the Montana Adopt-A-Bridge Program will be reviewed by MDT in consultation with SHPO. If the Montana Adopt-A-Bridge



program is deemed deficient or ineffective in its purpose to preserve historic bridges under public or private ownership, either in place or at alternate locations, then it may be revised through consultation between MDT and SHPO and amendment to this Agreement, pursuant to Stipulation 7.

F). ***Montana Historic Bridge Rehabilitation Program***

1. The Montana Historic Bridge Rehabilitation Program will apply to a select group of NRHP-eligible or potentially eligible state-administered on-system bridges as well as county or city maintained off-system bridges.
  - a. On-system bridges will be selected for the program by the MDT Bridge Bureau and District Administrators, in consultation with the MDT Environmental Services Bureau historian and SHPO.
    - (i) The public will be solicited for its input in the selection process through advertisements in local newspapers.
  - b. Off-System bridges will be selected for the program by the appropriate city and county governments in consultation with the MDT Bridge Bureau and District Administrators, the MDT Environmental Services Bureau historian, and SHPO.
2. The program will initially include 25 NRHP-eligible or potentially eligible bridges (preferably 5 bridges from each of the MDT's five administrative districts). A draft list of these bridges is attached as **Attachment 4** to this Agreement.
3. The selection of bridges for the program will be made by December 31, 2007.
4. All bridges included in the program will be programmed in initial planning by MDT as bridge rehabilitation rather than replacement projects.
5. MDT will address all undertakings with the potential to affect bridges within the Montana Historic Bridge Rehabilitation Program pursuant to all policies and procedures established in 36 CFR 800.
  1. All rehabilitations will meet the *Secretary of the Interior's Standards and Guidelines for Rehabilitation* (36 CFR 67).
  2. Rehabilitation project designs will be reviewed by the MDT historian and submitted to SHPO for consultation pursuant to 36 CFR 800.5-7.
6. In the unlikely event that if, at the time of an undertaking, MDT and SHPO agree that a bridge in the program cannot in fact be rehabilitated because of a new structural condition or other unforeseen factors, another NRHP-eligible bridge must be selected under this Stipulation to replace it in the program within 6 months of the mutual determination.

7. Once a bridge in the program has been successfully rehabilitated, another NRHP-eligible bridge must be selected under the terms of this Stipulation to replace it in the program within 6 months of the completion of the rehabilitation, thereby maintaining 25 bridges in the program at all times. At such time as MDT determines, in consultation with SHPO, that fewer than 25 bridges exist that are eligible for the program, the number of total bridges in the program may decrease accordingly.
8. Within 1½ years of a completed rehabilitation project, MDT will nominate the bridge to the National Register of Historic Places and provide an interpretive sign describing the history and significance of the bridge along with details acknowledging the rehabilitation project.
9. The MDT may develop further procedures for administering the Montana Historic Bridge Rehabilitation Program and submit them to SHPO for comment and concurrence. If MDT and SHPO agree, these procedures may be amended to this agreement, pursuant to Stipulation 7.

#### **4. NATIONAL REGISTER OF HISTORIC PLACES NOMINATIONS AND CONTEXT DEVELOPMENT**

##### *For Roads*

- A. MDT will nominate the Point of Rocks Segment of the Mullan Military Road (24MN133), with or without the adjacent abandoned Milwaukee Road Railroad grade, to the National Register of Historic Places by December 31, 2007.
  - 1) Within 1 year of the National Register listing, MDT will install interpretive markers about the Mullan Military Road at the I-90 Dena Mora Rest Area and the parking area located adjacent to the road segment at MP 72 on I-90.
- B. MDT will nominate at least one historic road segment in the Montana Historic Highway Program to the National Register of Historic Places every three (3) years beginning in 2008 (see Stipulation 2B) until such time that all roads in the program have been nominated.

##### *For Bridges*

- C. MDT in consultation with SHPO will develop National Register Multiple Property Documents (MPD's) for steel truss, reinforced concrete, steel stringer, girder, and timber bridges in Montana.
  1. MDT will submit the draft MPD's to SHPO as they are completed and SHPO will provide comments to MDT within 90 days.



2. Once mutually agreed upon by MDT and SHPO, the MPDs will provide the basis on which historic bridges are evaluated by MDT and SHPO according to the National Register criteria, pursuant to 36 CFR 63 (see Stipulation 3A)
3. As time and opportunity allow, the MDT and SHPO will collaborate to nominate eligible bridges to the National Register of Historic Places under the MPDs and submit both the MPDs and the bridge nominations to the Keeper.

## 5. EDUCATION AND OUTREACH PROGRAMS

### *For Roads*

- A. MDT will provide funding for the development and installation of five new roadside interpretive markers describing the history and significance of pre-1913 historic roads. The markers will be adjacent to Montana's existing primary and secondary highway system. The marker locations will be determined by MDT in consultation with SHPO.
- B. MDT will expand its historical marker program to MDT-administered Rest Areas to concentrate specifically on Montana's transportation history.
  - a. Ten new markers will be established at Rest Areas by 2015.
  - b. The first interpretive marker will be installed at the Interstate 90 Dena Mora Rest Area and describe the history and significance of the Mullan Military Road to west central Montana (see Stipulation 4A).
  - c. This first marker will be installed by December 31, 2007.
- C. MDT will finance the updating and republishing (with the Montana Historical Society Press or other publisher) of *Montana's Historical Highway Markers* when the current print run of the volume has been exhausted.
- D. MDT will revise and expand its 1993 unpublished document, *Roads to Romance: The Origins and Development of the Road and Trail System in Montana*, by December 31, 2009. Copies will be distributed to SHPO, the Montana Historical Society Library, and other interested parties, organizations, and agencies.

### *For Bridges*

- E. MDT will develop, deploy and maintain a Statewide Bridge Database/GIS in consultation with the Montana SHPO and the Montana State Library's Natural Resource Information System (NRIS) program.
  - a. The initial Statewide Bridge Database/GIS will be completed by December 31, 2007.

- b. Information in the database will include locations, Smithsonian trinomial numbers, National Register evaluations, photographs, bridge type, and brief narrative descriptions and histories of each bridge.
- c. The production and maintenance of the database will encourage and solicit multi-agency participation, including not only SHPO and NRIS, but also the Forest Service, National Park Service, U.S. Bureau of Land Management, Bureau of Reclamation, Indian Tribal governments, and the Bureau of Indian Affairs.
- d. The Statewide Bridge Database/GIS will be made available to and shared with the public, interested parties and agencies via the Montana State Library's NRIS website.

F. MDT will sponsor an historic bridge workshop or seminar in 2007 and again at least once every five (5) years thereafter.

- a. The workshops/seminars will address issues associated with the preservation and rehabilitation of historic bridges.

*For Roads and Bridges*

G. MDT will encourage and support the attendance of appropriate MDT employees at regional and national forums (workshops, seminars, conferences) dealing with the preservation of historic roads and bridges.

H. MDT will develop a "History of the Montana Department of Transportation" PowerPoint presentation, advertise and make it available to the public and interested agencies and organizations. The presentation will be completed by March 31, 2007.

I. MDT will develop and distribute a "Compilation of Montana Historical Highway Maps" to appropriate schools and agencies by June 30, 2007.

J. MDT will seek to participate as possible in other historic transportation-related educational and outreach programs on a can-do basis as they may become known.

**6. PROGRAMMATIC AGREEMENT IMPLEMENTATION REPORT**

- A. Biennially, MDT will complete and distribute a report providing a stipulation-by-stipulation accounting of the implementation of this Agreement.
- B. The report will be provided to the signatories to this Agreement for review and comment.
- C. The first report will be prepared two years from the execution of this Agreement, and every two years thereafter.



## **7. AGREEMENT MONITORING, AMENDMENT, AND TERMINATION**

- A. This Agreement will remain in force until such time that it is terminated by one or more of the signatory parties.
- B. Any signatory to this Agreement may terminate it by providing, in writing, forty-five (45) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek arrangement on amendments or other actions that would avoid termination. In the event of termination, FHWA will comply with 36 CFR 800 with regard to each individual undertaking covered by this Agreement.
- C. The Council and SHPO may monitor any activity carried out pursuant to this Agreement, and the Council will review such activities if so requested. MDT and FHWA will cooperate with the Council and the SHPO in carrying out their monitoring and review responsibilities.
- D. Any signatory of this Agreement may request that it be amended, whereupon the signatories will consult to consider such amendment. An amendment will go into effect when agreed to in writing by all the signatories.

## **8. OBJECTIONS, DISPUTE RESOLUTION, AND FAILURE TO FULFILL**

- A. Should any signatory to this Agreement object within sixty (60) days to any action proposed or undertaken pursuant to this Agreement, the FHWA shall consult with the objecting party to resolve the objection. If the FHWA determines that the objections cannot be resolved, the FHWA shall forward all documentation relevant to the dispute to the Council, including the FHWA's proposed response to the objection. Within thirty (30) calendar days after receipt of all pertinent documentation, the Council will either:
  - 1. advise the FHWA that it concurs with the FHWA response, whereupon the FHWA will respond to the objection accordingly; or
  - 2. advise the FHWA that it should enter into adverse effect consultation pursuant to 36CFR800.6; or
  - 3. provide the FHWA with recommendations, which the FHWA will take into account in reaching a final decision regarding the dispute; or
  - 4. notify the FHWA that it will comment pursuant to 36 CFR 800.7(c), and proceed to comment on the subject of the objection. Any Council comment provided in response to such a request will be taken into account by the FHWA in accordance with 36 CFR 800.7(c)(4) with reference only to the subject of the dispute; the FHWA and MDT's responsibility to carry

out all actions under this Agreement that are not the subjects of the dispute will remain unchanged.

5. If the Council fails to provide recommendations or to comment within the specified time period, the FHWA may implement that portion of the undertaking subject to dispute under this Stipulation in accordance with the documentation submitted to the Council for review.
- B. At any time during implementation of the measures stipulated in this Agreement, should any objection to any such measure or its manner of implementation be raised by a member of the public or other non-signatory to the Agreement, the FHWA shall take the objection into account and consult as needed with the objecting party, the SHPO or the Council to address the objection.
  - C. In the event that the FHWA or MDT does not carry out the terms of this Programmatic Agreement, it shall not take any action or make any irreversible commitment that would result in an adverse effect to historic properties or would foreclose the Council's consideration of modifications or alternatives to the undertaking.

Execution and implementation of this Programmatic Agreement evidences that the FHWA has satisfied its Section 106 responsibilities for all individual undertakings subject to the terms of the Agreement.



**MONTANA DIVISION, FEDERAL HIGHWAY ADMINISTRATION**

By: *Theodore H Burch*  
Ted Burch, Program Development Engineer

Date: 12/12/2006

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

By: *John M. Fowler*  
John M. Fowler, Executive Director

Date: 2/1/07

**MONTANA STATE HISTORIC PRESERVATION OFFICE**

By: *Mark F. Baumler*  
Mark F. Baumler, State Historic Preservation Officer

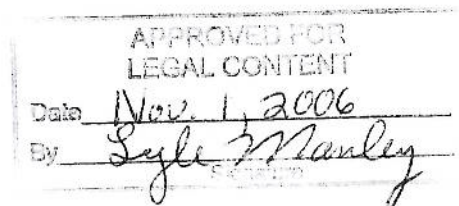
Date: 12/18/2006

**CONCUR:**

**MONTANA DEPARTMENT OF TRANSPORTATION**

By: *Jim Lynch*  
Jim Lynch, Director MDT

Date: 1/08/07



**Attachment 1: To be Determined/ December 1, 2007**



## **Attachment 2: Criteria for Selection of New Owner: Adopt-A-Bridge Program**

The intent of the Adopt-A-Bridge program is to maintain the historic integrity of the existing bridge to the greatest extent possible. Greater consideration will be given to leaving the structure in place and for providing the highest use for the largest population possible.

The selection criteria noted below (in descending order of preference) will be used as a guide in the event two or more entities express an interest in the bridge.

- I. Leave in place
  - a. Adoption by government agency
  - b. Adoption by an established civic group
  - c. Adoption by a non-incorporated group.
  - d. Adoption by an individual
  
- II. Move to a New Location
  - a. Adoption by a government agency
  - b. Adoption by an established civic group
  - c. Adoption by a non-incorporated group
  - d. Adoption by an individual

If there is no obvious choice for a new owner by using these guides, the new owner will be selected by lot.

The new owner will be required to sign an agreement holding the State, county and/or city harmless for any structural problems or lead paint associated with the bridge. This agreement will contain the conditions by which the new owner will agree to be a "responsible party" and agree to maintain the historic integrity of the structure.

Under criteria I (b, c or d), the new owners will be required to provide a bond in an amount to be determined by the State to cover the cost of future demolition of the structure. The bond will be used in the event the new owner defaults on his/her commitment for care and maintenance of the bridge.

Applicants will be required to submit the following information in writing:

- 1) New owner of the structure
- 2) What will be the intended use of the bridge?
- 3) Who will use the bridge?
- 4) Where will the bridge be located?
- 5) If moved to a new site, how will this be accomplished?

The new owner will receive the "estimated cost" of removal to relocate/rehab the bridge unless the project goes to bid in which case the "bid amount" for the low bidder will be used.

This policy will also be used for bridges that are selected for adoption but are not on or eligible for listing on the National Register of Historic Places. In those cases the agreement may or may not require maintaining the historic integrity of the structure. The amount available to relocate/rehab the structure will be 80% of the estimated (or bid) amount to remove the structure.



**Attachment 3: Sample Agreement for the Adopt-A-Bridge Program.**

**AGREEMENT**

WHEREAS, \_\_\_\_\_ County and the State of Montana, through the Montana Department of Transportation (collectively hereinafter referred to as "Owners"), are in the process of proposing a new bridge at or near the location of the current Bridge, (hereinafter "Bridge") over the \_\_\_\_\_ River; and

WHEREAS, Owners are considering the possibility that the current bridge will be either abandoned or dismantled as a result of the building of a new bridge; and

WHEREAS, 23 U.S.C. 144(o)(4), states in part, "Any State which proposes to demolish a historic bridge for a replacement project with funds made available to carry out this section shall first make the bridge available for donation to a State, locality, or responsible private entity if such State, locality, or responsible entity enters into an agreement to-

- (A) maintain the bridge and the features that give it its historic significance; and
- (B) assume all future legal and financial responsibility for the bridge, which may include an agreement to hold the State highway agency harmless in any liability action."

WHEREAS, in consideration of the estimated cost of demolition of the Bridge, the \_\_\_\_\_ has agreed to hold Owners harmless in any liability action, and to assume all future liability associated with the Bridge regardless of whether it is to remain in place or to be removed. Therefore, the parties agree as follows:

This agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between Owners and \_\_\_\_\_.

The purpose of this agreement is to provide for indemnification and hold harmless provisions Owner will transfer ownership of the bridge and the expected cost of demolition to \_\_\_\_\_. The expected cost of demolition is \$\_\_\_\_\_. This amount is to be used solely for restoration in place, or movement, placement and restoration in new location, of the Bridge. Further, \_\_\_\_\_ agree to accept ownership of the Bridge and maintain the Bridge and the features that give it its historic significance.

\_\_\_\_\_, its directors, supervisors, agents and employees, covenants not to sue and agrees to indemnify the Owners, its agents and employees, and save each of them harmless from itself and any third parties for personal injuries, property damage, loss of life or property, civil penalties, or criminal fines resulting from or in any way

connected with ownership and activities on the Bridge or the Owners' actions or non-actions taken after the signing of this agreement.

Further, \_\_\_\_\_ agrees to protect, defend, and save the Owners harmless from and against all claims, demands, and causes of action of any kind or character, including defense costs, arising in favor of the \_\_\_\_\_'s employees or third parties, on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of the \_\_\_\_\_ and/or its employees, subcontractors, or representatives and the state under this agreement.

Further, \_\_\_\_\_, its directors supervisors, agents and employees, covenant not to sue and indemnifies the Owners, their agents and employees from any and all third party claims and liability arising or related to all common law claims, civil and criminal statutory and regulatory claims, including, but not limited to, any and all claims arising from or in any way related to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C.6901, et seq., the Clean Water Act, as amended, 33 U.S.C. 1251, et seq., the Clean Air Act, as amended, 42 U.S.C. 741 et seq., the Solid Waste Disposal Act, as amended, 42 U.S.C. 6901, et seq., including civil and criminal penalties assessed by any federal, state, regional or local government entity or court for actions or non-actions by Owners, or , in any manner relating to or arising from ownership or activities upon this Bridge.

\_\_\_\_\_ further agrees that any funds that they receive pursuant to this agreement will be used for either the restoration of the Bridge or its proper removal to another location. In either event, the Bridge must maintain it historic character.

\_\_\_\_\_ must provide and maintain, at its cost and expense, insurance against claims for injuries to persons or damages to property including contractual liability which may arise from or in connection with the performance of work performed by the \_\_\_\_\_, its agents, representatives, officers, assigns or employees.



\_\_\_\_\_ in completing its obligations under this agreement shall at all times observe and comply with all existing laws, ordinances, and regulations, and other agencies of government and save them harmless from all claims and liabilities due to negligent acts of its subcontractors, agents or employees during the performance of the work called for under this agreement.

This agreement contains the entire agreement between the parties and no statements, promises, or inducements made by either party which are not contained in this written agreement shall be binding or valid.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

MONTANA DEPARTMENT OF TRANSPORTATION

By \_\_\_\_\_

COUNTY OF \_\_\_\_\_

By \_\_\_\_\_

**Attachment 4: Draft list bridges proposed for Historic Bridge Rehabilitation Program**

	<b>Bridge</b>	<b>Number</b>
	<b>Missoula District</b>	
1.	Swan River at Bigfork	L15672000+02001
2.	Kootenai River at Troy	L27411000+01001
3.	Blackfoot River south of Clearwater Junction	L32406002+06001
4.	Noxon Bridge	L45260000+01001
5.	Little Blackfoot River SW of Avon	L39311000+01001
	<b>Butte District</b>	
6.	Ferry Creek Bridge NE of Livingston	L34003001+07001
7.	Missouri River at Toston (truss)	L04415000+01001
8.	Big Hole River near Glen (Kalsta Bridge)	L01311022+02001
9.	Red Rock River 4 mi. NW of Lima	L01266000+05001
10.	Gallatin River/Axtell Bridge	L16494000+05001
11.	Yellowstone River/Carbella Bridge	L34301000+03001
12.	Jefferson River north of Three Forks	L16216002+02001
	<b>Great Falls District</b>	
13.	Missouri River NE of Wolf Creek	L25003011+00001
14.	25 <sup>th</sup> Street North at Great Falls	U05217001+05401
15.	Marias River/Pugsley Bridge	L26038005+01001
16.	Missouri River at Hardy	L07604006+04001
17.	Milk River west of Zurich	L03325000+04001
18.	Fresno Reservoir Spillway	L21014002+07001
19.	Little Prickly Pear Creek/Jack Walsh Bridge	L25005007+00001
	<b>Glendive District</b>	
20.	Powder River at Locate	L09307000+03001
21.	Bad Route Creek	L11109020+03001
22.	Locate Creek	L09305003+03001
23.	Yellowstone River at Fallon	L40114001+05001
24.	Powder River west of Terry	L40004006+02001
25.	Beaver Creek Bridge	L36206000+05001
	<b>Billings District</b>	
26.	Bluewater Creek southeast of Fromberg	L05302008+06001
27.	East Rosebud Creek at Rosebud	L05503000+01001
28.	Fred Robinson Bridge	P00061088+00671
29.	Big Horn River at Custer	L56104002+05001
30.	Musselshell River 7 mi. NE of Roundup	L33017000+04001
31.	Dry Wolf Creek	L23101010+04001
32.	Judith River Bridge	L23006001+00001
33.	Musselshell River/Goffena Bridge (timber truss)	L33035000+02001
34.	Yellowstone River SE of Reed Point	L48115000+08001