

## SIGNAL EMERGENCY RESPONSE AGREEMENT

This agreement is between the City of Billings (City) and the Montana Department of Transportation (MDT) to define the signal emergency response responsibilities of the City and MDT in accordance with State Law which allows MDT to enter into an agreement with local governments to provide emergency response on state routes with provision for full reimbursement. The term of this agreement shall be from the date of approval by both parties and will end June 30, 2013.

**LIMITS OF AGREEMENT:** The listing of streets and intersections attached as Appendix A is a full and complete listing of the signals and flashers covered by this agreement. During the term of this agreement, additional areas may be added by written agreement of the parties.

**SCOPE OF AGREEMENT:** This agreement covers all activities ordinarily associated with emergency response signal maintenance.

**ITEMS COVERED:** Payment to the City for this agreement shall be for the following:

- A) MDT will continue to provide power for signals presently billed to MDT by Northwestern Energy (Utility).
- B) City will provide all emergency response necessary for the Signal System, MDT will reimburse City in accordance with Appendix B for the proper emergency response of the Signal System. At MDT's option, Signal materials and parts will be provided by MDT or MDT will reimburse the City on an actual cost basis. This will be in addition to the payment detailed in Appendix B.
- C) For purposes of this agreement, the Signal System includes all items covered Part IV-of the Manual on Uniform Traffic Control Devices, dated 1988 with revisions thereto.
- D) Street lighting facilities, except as specifically noted, on these routes are not covered by this Agreement and will remain the responsibility of MDT.
- E) The City will assist MDT in locating underground electrical lines for the Signal System; MDT will reimburse City in accordance with Appendix B.

**COSTS:** The costs associated with this agreement shall be shown in Appendix B and shall be paid to the City on a monthly basis based on the reimbursement breakdown shown in Appendix B.

**RECORDS:** The labor, equipment and materials used under this agreement shall be assigned a special budget category by the City. No recordkeeping shall be attempted to break contractual costs against individual streets that are covered in this agreement. All City records concerning this project are open for review and/or audit by representatives of MDT or the Legislative Auditor at any reasonable time.

**PAYMENT:** The City shall submit a monthly billing and a narrative summary of the work done in the preceding month on or before the 10<sup>th</sup> of the current month. MDT agrees to make payment within 20 calendar days of receipt of the billings.

**TERMINATION:** This agreement may be terminated upon sixty (60) days written notice, delivered by certified mail, return receipt requested, by either party.

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**QUARTERLY MEETING:** There shall, as a minimum, be one meeting per calendar quarter to assess the effectiveness of this program and to ensure that budgeting restraints are met. Either party to this agreement may have any staff present.

**COMPENSATED DAMAGES:** It is understood that any damages caused by third parties that can be collected from third parties will be repaired by the City, and a billing for these repairs shall be sent to MDT along with any documentation which the City has available to help MDT in making the collection. MDT shall pay the City for these repairs on an actual documented cost. Payment under this provision shall be in addition to the payment detailed in Appendix B.

**PRIORITIES FOR CONSTRUCTION OR RECONSTRUCTION:** City will rate all potential improvements using a uniform set of criteria. No special or different criteria will be used on the streets covered in this Agreement.

**CONTROLS OF ACCESS AND UTILITIES:** The control of access and utilities within these streets remains with MDT.

**HOLD HARMLESS/INDEMNIFICATION:** The State agrees to hold harmless and/or indemnify the City for damages resulting from the construction or design done by the State of the streets and areas covered by this Agreement. This hold harmless /indemnification clause shall not cover damages which are caused either directly or indirectly by the work done by the City pursuant to this agreement. The City will defend, protect, indemnify and hold harmless the State, its elected and appointed officials, and MDT from any and all claims, losses, damage or causes of action arising from or due to, or allegedly arising from or due to the acts, omissions or manner of performance of any of the services or duties under this agreement to be performed by the City or its contractor or subcontractor, including any claims by employees or third persons, except that the City is not responsible for any liability arising from the negligence of MDT.

**LAW AND VENUE:** This agreement is governed by the laws of Montana. The parties agree that, in the event of any dispute concerning this agreement, any litigation must be brought in the First Judicial District, in and for Lewis & Clark County

**CIVIL RIGHTS COMPLIANCE:** City must comply with all applicable Federal and State laws including, but not limited to, prevailing wage laws and those laws referred to in the two-page notice attached hereto, which is made a part of this agreement by its reference.

**ENTIRE AGREEMENT:** This document, with its appendixes and the notice, contains the entire agreement between the parties, and no statements, promises or inducements made by either party or its agents which in any way modifies, alters or changes the contents of this document is binding. Any subsequent modification must be done by a separate written document.

**RESPONSE PROCEDURE:** City will respond to emergency signal work based on contacts received from the public to the city and on emergency work deemed necessary by city staff without first contacting MDT for approval for that work. City will also respond to emergency signal work based on contact from MDT.

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IN WITNESS THEREOF, the parties hereto caused this agreement to be executed in duplicate by their duly authorized officers.

STATE OF MONTANA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
District Administrator

Approved as to Legal Content: \_\_\_\_\_  
MDT Legal Services

CITY OF BILLINGS

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Thomas W. Hanel, Mayor

ATTEST:  
\_\_\_\_\_

Enclosures:  
NONDISCRIMINATION NOTICE  
APPENDIX A Location of Traffic Signals/flashers covered by this agreement.

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## NON-DISCRIMINATION NOTICE

During the performance of this Agreement, the City of Helena (hereafter in this Section “the Party”), for itself, its assignees and successors in interest, agrees as follows:

- A) **COMPLIANCE WITH TITL VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS**
- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations, Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
  - (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5.
  - (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party’s obligations under this Agreement and the Regulations relative to nondiscrimination.
  - (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
  - (5) Sanctions for Noncompliance: In the event of the Party’s noncompliance with the nondiscrimination provision of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
    - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
    - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
  - (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such actions with respect to any subcontracts or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that

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in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the

Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

### **B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, §49-3-207, MCA**

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

### **C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

- (1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **“The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party.”**
- (3) All video recordings produced and created under contract and/or agreement will be closed captioned.

### **D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR §26**

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

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

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### **APPENDIX "A"- Location of Traffic Signals/flashers covered by this agreement**

1	1st Ave S and State Ave	Signal
2	1st Ave S and 29th St	Signal
3	1st Ave S and 28th St	Signal
4	1st Ave S and 27th St	Signal
5	Montana Ave and 27th St	Signal
6	1st Ave N and Main St	Signal
7	1st Ave N and 13th St	Signal
8	1st Ave N and 25th St	Signal
9	1st Ave N and 26th St	Signal
10	1st Ave N and 27th St	Signal
11	1st Ave N and 28th St	Signal
12	1st Ave N and 29th St	Signal
13	1st Ave N and 30th St	Signal
14	1st Ave N and 31th St	Signal
15	1st Ave N and 32nd St	Signal
16	1st Ave N and Division	Signal
17	2nd Ave N and 27th St	Signal
18	11th Ave N and 27th St	Signal
19	3rd Ave N and 27th St	Signal
20	4th Ave N and 27th St	Signal
21	4th Ave N and 13th St	Signal
22	4th N and Main St	Signal
23	6th N and Main St	Signal
24	6th Ave N and 27th St	Signal
25	9th Ave N and 27th St	Signal
26	King Ave W and 20th St	Signal
27	King Ave W and 24th St	Signal
28	Poly Dr and 27th St	Signal
29	Main St and Highway 318	Signal
30	Main St and Lake Elmo	Signal
31	Main St and Hilltop	Signal
32	Main St and Milton	Signal
33	Main St and Logan	Signal
34	Main St and Wicks	Signal
35	Main St and Pemberton	Signal
36	State Ave and Orchard	Signal
37	State Ave and Underpass	Signal
38	Laurel Road and Moore Lane	Signal
39	Lockwood and Frontage Rd	Signal
40	Lockwood and Interchange	Signal
41	King Ave W & ShopKo	Signal
42	South Billings Blvd & I-90 North	Signal

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### **APPENDIX "A"- Location of Traffic Signals/flashers covered by this agreement (con't)**

43	South Billings Blvd & I-90 South	Signal
44	King Ave & Laurel Rd	Signal
45	King Ave W & I-90	Signal
46	State and 27th	Signal
47	Muldowney and Midland	Signal
48	Laurel Rd and Parkway Lane	Signal
49	Zoo Dr and Gable Road.	Signal
50	Johnson Lane and I-90	Signal
51	Hwy 312 and Hwy 89	Flasher
52	Zoo Dr and S. Frontage Road	Signal
53	Zoo Dr and N. On/Off Ramp I-90	Signal
54	Zoo Dr and S. On/Off Ramp I-90	Signal

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## **APPENDIX "B" - Reimbursement Breakdown.**

1. Labor – Salary plus 37% Payroll Additive
2. Materials – Actual invoice cost
3. Overhead – Overhead percentage of 14% applied to Labor & Materials

### Equipment

1. Service/Bucket truck - \$64/hour
2. Conflict Monitor - \$150 per test
3. Compressor - \$24/hour

Other Equipment charged at prevailing local rental rates.