

**STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION
UTILITIES AGREEMENT**

This Agreement is entered into this _____ day of _____, 2018 between the State of Montana, acting through its Department of Transportation, hereinafter called the “STATE”, and the City of Billings, owner of the utility, hereinafter called the “OWNER”.

WITNESSETH:

WHEREAS, the STATE proposes to construct a public highway to be known as NH 53-1(42)6 [8888000] in Yellowstone County, State of Montana, and designated as Highway Project MT 3 - Zimmerman Tr Intrsect Imprv, as shown on plans submitted to Owner, and

WHEREAS, that public highway is to be constructed over and near the present highway right-of-way known as Montana Highway 3, where certain water facilities under the jurisdiction of OWNER are to be relocated with the construction of the public highway, as shown by “Exhibit A”, and

WHEREAS, STATE and OWNER agree that it is necessary and in the public interest of all parties that some of the existing facilities be adjusted, repaired, replaced and relocated, and

WHEREAS, STATE and OWNER agree that the construction of the public highway and all of the work, including adjustment, replacement, repair and relocation of certain existing facilities, be included in the contract entered into by STATE and a private contractor, and that the manner of performing the construction referred to in the Agreement is in the best interest of the STATE and OWNER.

NOW THEREFORE, in consideration of the mutual obligations contained herein, STATE and OWNER agree that:

1. STATE will let a project for the construction of the public highway, including the work covered in this Agreement, as shown by “Exhibit A.”
2. Pursuant to the authority granted to OWNER by the laws of Montana, OWNER

grants to STATE the authority to adjust, replace, repair and relocate those facilities under the jurisdiction of OWNER which presently occupy part of the proposed right-of-way.

3. All construction performed pursuant to this Agreement shall be done in accordance with the then-current Standard Specifications for the Road and Bridge Construction, Montana Public Works Standard Specifications, and the Plans, Specifications and Special Provisions of the construction or improvements for the project prepared by OWNER, all of which are by this reference incorporated and made a part of this Agreement.

4. The adjustments to the facilities referred to in this Agreement cover only that segment of the water system of OWNER directly affected by the construction of the highway and STATE and OWNER will determine which adjustments to facilities of OWNER are necessary; and the STATE shall, in accordance with the plans, construct the most economical type of facilities in the new location that will meet the same service requirements of the old facilities in the old location.

5. The STATE will stake and inspect the installation of the new water line. The STATE'S contractor will chlorinate and pressure test the new water line. The OWNER will pay the STATE for the actual cost of work accomplished on the OWNER'S line based on contract bid prices. An additional 8% will be applied to the billing of construction costs to cover the cost of Traffic Control and an additional 8% to cover the cost of Mobilization.

Section 17-1-106. MCA, requires any state agency, including the STATE, that receives non-general funds to identify and recover its indirect costs. These costs are in addition to direct project costs. STATE'S indirect cost rate is determined annually as a percentage of the project's direct costs to cover the project's share of STATE'S indirect costs as defined by 2 CFR Part 200, Appendix VII. STATE'S current indirect cost rate is 10.96% for fiscal year 2018 (July 1, 2017 to June 30, 2018).

For this project, STATE billings to the OWNER will include a charge for the indirect costs at the current fiscal year indirect cost rate, which amount will be applied toward the total project contribution of the OWNER. [Note: If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the project.]

6. The total estimated cost of the adjustments at this time is \$105,237.00. Proportionate participation is: STATE \$0.00 (0%); and OWNER \$105,237.00 (100%), plus \$8,418.96 (8%) charge for Traffic Control and \$8,418.96 (8%) for Mobilization, and an additional \$13,379.41 (10.96%) charge for Indirect Cost (IDC). The total estimated cost to OWNER is \$135,454.33. The total project costs are \$135,454.33. Copies of cost estimate and plans indicating facility adjustments are hereby attached as "Exhibit A" and made a part of this Agreement. The STATE'S obligation under this Agreement shall be in accordance with all applicable State and Federal laws in existence on the date of execution of this Agreement.

7. By state statute, STATE will not reimburse OWNER for engineering costs for designing, location, staking, inspecting or any other incidental costs for engineering.

8. The adjustments agreed to in Item No. 6 above are based on the STATE paying 0% of relocation costs. The OWNER will be billed in advance for its portion of the estimated total costs of the project no more than sixty (60) days before bid opening. Although the anticipated expenses will have been discussed with OWNER representatives before that time, the STATE will provide a detailed breakdown of all estimated costs with the billing.

The OWNER will submit payment to the STATE within thirty (30) days of billing. The STATE will not proceed further with the project's development if payment is not made within (30) days of billing. If the federal government requires a reimbursement or return of any federal funds because a project doesn't advance due to OWNER'S failure to make any scheduled

payment, the OWNER agrees that it will reimburse the STATE for those federal funds within thirty (30) days of billing.

If, after initial payment is made, bid opening or contract award by the STATE is delayed or postponed by 30 days or more, or canceled for any reason, the STATE agrees to immediately refund OWNER'S initial payment upon the OWNER'S request. If the OWNER'S share of the cost of the awarded project exceeds the amount paid by the OWNER, the OWNER will pay the excess. The contact for billing, accounting and change order questions for the OWNER shall be:

City of Billings
Attn: Vern Heisler
2224 Montana Avenue
Billings, MT 59101

Within six (6) months after the project has been finally accepted with the final costs submitted, the STATE will submit a final statement to the OWNER. The final statement will provide details of any expenses that may be identified as "miscellaneous". The final statement will include a refund of unspent portions of the OWNER'S initial payment, payable to the OWNER in an amount equaling the difference between that payment and the OWNER'S share of the final costs. If the final statement exceeds the OWNER'S payments thus far, the OWNER will remit to the STATE within thirty (30) days of the final statement the difference between OWNER'S share of final costs and OWNER'S earlier payment. If payment is not made within that thirty (30) day period, interest on the unpaid amount will accrue at the rate of 10% per year, and continue to accrue until paid in full. If the OWNER is billed for additional funds, STATE will not participate in any future funding agreements with the OWNER until full payment, including interest, is received from the OWNER.

Payments to this project will be coordinated through the STATE'S Administration Division (to be directed to MDT's Accounts Receivable Collections Technician and Accounting

Systems Operations Supervisor). Payments to this project will be provided to the above STATE staff in the form of a check to be credited to this project.

9. The award of the contract including the highway construction and OWNER water line relocation will be based on the successful bidder of the combined contract, as determined and accepted by STATE.

10. OWNER agrees to cooperate fully with the STATE in all aspects of the work contemplated by this Agreement.

11. OWNER acknowledges that it has reviewed the plans for the proposed construction of the facilities covered by this Agreement.

12. STATE and OWNER agree that when the construction encompassed by this Agreement is completed and accepted by STATE and concurred in by OWNER all responsibility of STATE ceases.

13. Records of the OWNER pertaining to this project will be subject to inspection at any time by representatives of the STATE, including the legislative auditor and fiscal analyst, and the Federal Highway Administration. Project records must be retained for a period of not less than three years from the date of final payment.

14. Inspection for all phases of work on OWNER'S facility will be provided by OWNER. Contact, questions, or discussions about contractor work will be directed to the STATE'S Project Manager. No direct contact shall occur between OWNER and Contractor.

15. This Agreement is subject to the terms and provisions of Title 23 Code of Federal Regulations, Part 645, Subpart A and B, and subsequent amendments, Title 48 Code of Federal Regulations in existence on the date of execution of this Agreement. The Code of Federal Regulations are hereby incorporated in and made part of this Agreement by reference to the extent that is applicable to this Agreement and not inconsistent therewith.

16. NONDISCRIMINATION

If the OWNER enters into a contract or agreement with a contractor to perform any of the work which the OWNER is required to perform under the terms of this agreement, the OWNER, for itself, its assigns, and successors in interest, agrees that it will not discriminate in the choice of contractors and will include all the nondiscrimination provisions set forth in Addendum "B" attached hereto and made a part hereof, in any such contract or agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

It is understood that the OWNER is responsible for obtaining any permits required for adjustment of its facility.

City of Billings

STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION

Gabe Priebe, Supervisor
R/W – Utilities Section



Approved for Legal Content
MDT Legal Services

**MDT NONDISCRIMINATION
AND
DISABILITY ACCOMMODATION NOTICE**

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

Federal protected classes

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

State protected classes

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

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

- (1) **Compliance with Regulations:** The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- (2) **Non-discrimination:**
 - a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
 - b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
 - ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
 - iii. Contact information for PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
 - iv. Information on how to request information in alternative accessible formats.
 - c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.
- (3) **Participation by Disadvantaged Business Enterprises (DBEs):**
 - a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml
 - b. By signing this agreement the PARTY assures that:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
 - c. PARTY must include the above assurance in each contract/agreement the PARTY enters.
- (4) **Solicitation for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.
- (5) **Information and Reports:** The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the

exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

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

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

(7) Pertinent Non-Discrimination Authorities:

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

Federal

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

State

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

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

Summary of Costs for City of Billings

Subject NH 53-1(42)6 I/C
 MT 3 - Zimmerman Tr Intrsct Imprv
 Control No. 8888000

Item No.	Quantities	Description	Unit	Unit Cost	Total Unit Cost
603013675	10 ✓	Ductile Iron Pipe 6 IN CL 51	LNFT	\$60.00	\$600.00
603013754	28 ✓	Ductile Iron Pipe 16 IN CL 52	LNFT	\$90.00	\$2,520.00
603013768	598 ✓	Ductile Iron Pipe 24 IN CL 52	LNFT	\$115.00	\$68,770.00
603013828	3621 ✓	Ductile Iron Fittings	LB	\$7.00	\$25,347.00
603014490	1	Fire Hydrant ✓	EA	\$3,000.00	\$3,000.00
	1	1" Saddle Tap W/ Corp Stop ✓	EA	\$1,500.00	\$1,500.00
	1	Connection To EX 16" Pipe ✓	EA	\$3,500.00	\$3,500.00
					\$0.00
					\$0.00
					\$0.00
TOTAL					\$105,237.00

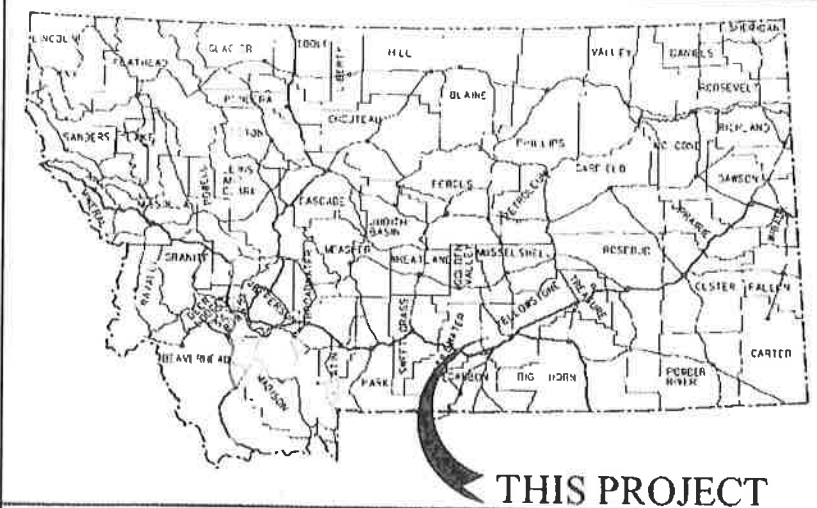
MDT COST SHARE	0% x			
TOTAL MDT'S RESPONSIBILITY				\$0.00
OWNER'S COST SHARE	100% x	\$105,237.00		\$105,237.00
MOBILIZATION	8% x	\$105,237.00		\$8,418.96
TRAFFIC CONTROL	8% x	\$105,237.00		\$8,418.96
SUB-TOTAL				\$122,074.92
IDC	10.96% x	\$122,074.92		\$13,379.41
TOTAL OWNER'S RESPONSIBILITY				\$135,454.33

PROJECT TOTAL				\$135,454.33
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Note: 100% City cost share

SG: mk

EXHIBIT A



THIS PROJECT

MONTANA DEPARTMENT OF TRANSPORTATION

UTILITY PLAN OF FEDERAL AID PROJECT NH-HSIP-G 53-1(34)6(IC) MT3 - ZIMMERMAN TR INTRSTCT IMPRV YELLOWSTONE COUNTY

LENGTH 0.3 MILES

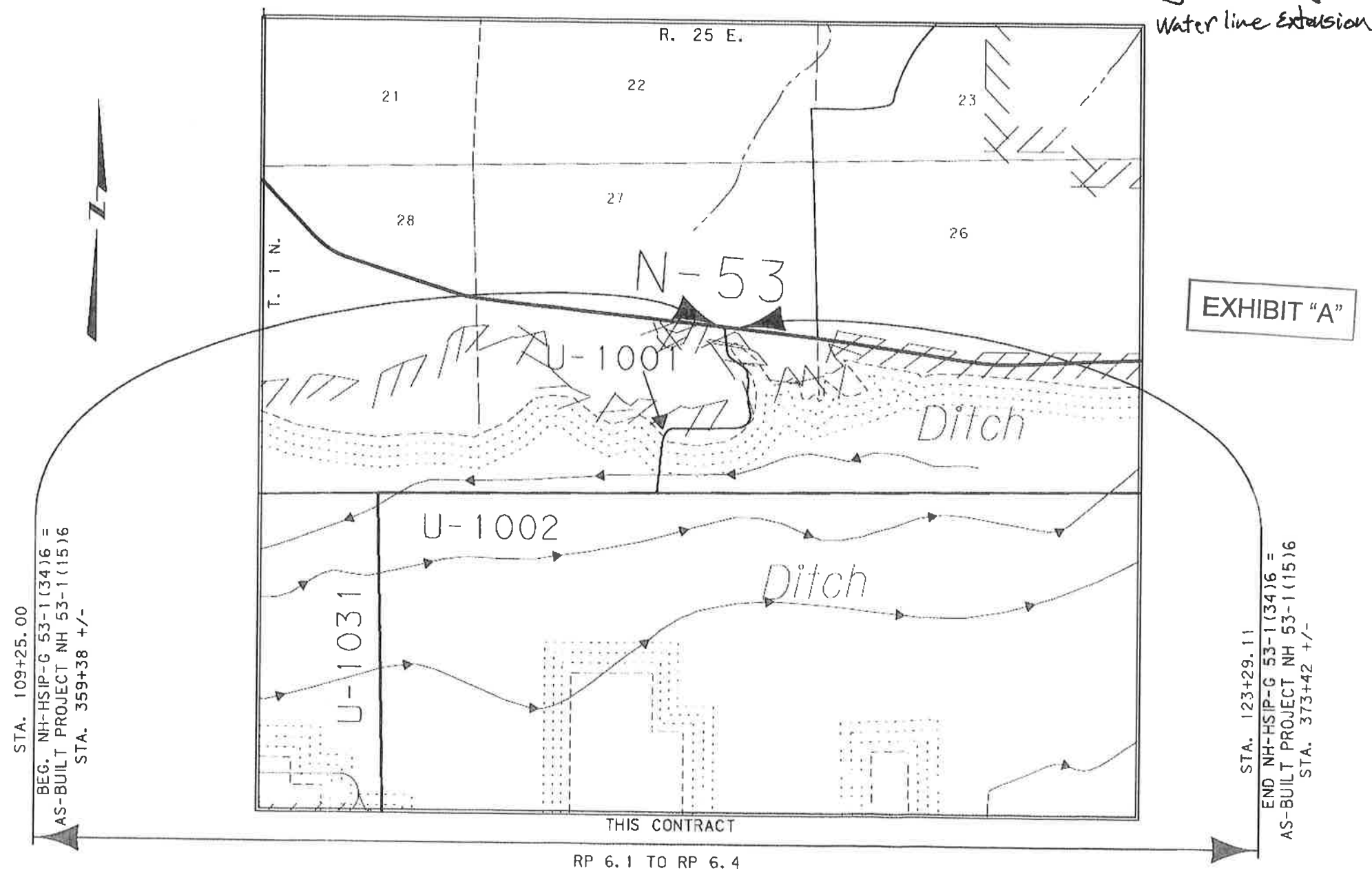
DESIGN DATA: MT 3	
PRESENT 2015	A.D.T. = 7,810
LETTING 2018	A.D.T. = 8,660
DESIGN 2038	A.D.T. = 17,230
	D.H.V. = 1,980
	TRUCKS = 4.7%
	V. = 60 MPH
	18 KIP ESAL'S = 309
	GROWTH RATE = 3.5%
DESIGN DATA ZIMMERMAN TRAIL	
PRESENT 2015	A.D.T. = 9,740
LETTING 2018	A.D.T. = 10,800
DESIGN 2038	A.D.T. = 21,490
	D.H.V. = 2,360
	TRUCKS = 1.4%
	V. = 35 MPH
	18 KIP ESAL'S = 72
	GROWTH RATE = 3.5%

PLAN LEGEND

- CENTERLINE & OR PROJECTED LINE
- PROPOSED RIGHT OF WAY LINE
- EXISTING RIGHT OF WAY LINE
- RAILROAD RIGHT OF WAY LINE
- EXISTING ACCESS CONTROL
- FULL ACCESS CONTROL
- LIMITED ACCESS CONTROL
- OWNERSHIP BOUNDARY
- SECTION LINE
- SECTION CORNER
- 1/4 SECTION CORNER
- RIGHT OF WAY MONUMENT
- PROPERTY CORNER PIN
- PARCEL NUMBERS
- PRESENT TRAVELED WAY (P.T.W.)
- APPROACH: EXIST. - PROPOSED
- FENCE LINE
- GATE IN FENCE
- CATTLE GUARD: EXIST. - PROPOSED
- BRIDGES
- RAILROADS
- EXISTING GUARDRAIL
- PROPOSED GUARDRAIL
- EXISTING DITCH
- CHANNEL CHANGES
- EXISTING CULVERT
- PROPOSED CULVERT
- OUTLET DITCH
- INLET DITCH
- WETLANDS NOT IMPACTED
- WETLANDS IMPACTED
- POWER POLE IN PLACE
- TELEPHONE POLE IN PLACE
- LIGHT POLE - GUY POLE
- PEDESTALS
- MANHOLES
- VALVES
- FIRE HYDRANT
- FIBER CABLE
- GAS
- POWER
- TELEPHONE
- TELEVISION
- WATER
- SANITARY SEWER

UTILITY POLES IN POSSIBLE CONFLICT

ASSOCIATED PROJECTS
NH-HSIP-G 53-1(34)6 PE
RELATED PROJECTS
F-296(13)
F 53-1(8)6
FHP-296B
S-176(1)



CONSTRUCTION LIMITS	MA ³ REVISED
CUT SECTION	
TRANSITION	
TOE OF FILL	
BACKSLOPE LIMITS INCLUDE ROUNDING	FHWA/MDT APPROVAL 3-28-11

FOR

