

COOPERATIVE AGREEMENT
BETWEEN THE
MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS (FWP),
FEDERAL HIGHWAY ADMINISTRATION (FHWA)
AND THE
MONTANA DEPARTMENT OF TRANSPORTATION
RELATIVE TO
PRIORITY HIGHWAY CONSTRUCTION
AND WETLAND MITIGATION

June 2001

This Cooperative Agreement (Agreement) between the Montana Department of Transportation (MDT), the Federal Highway Administration (FHWA), and the Montana Fish, Wildlife and Parks (FWP) sets forth responsibilities of the signatory agencies (Parties) relative to coordination of highway construction projects with the goal of prioritizing timely design and implementation of highway improvements.

WHEREAS, because of federal-aid highway funding increases under the Transportation Equity Act for the 21st Century (TEA-21), MDT has substantially increased the number of highway construction projects resulting in an increased need of wetland mitigation projects; and

WHEREAS, FWP has indicated that due to staff resource constraints, it is currently unable to provide MDT with staff assistance for wetland mitigation project identification for anticipated highway construction projects; and

WHEREAS, MDT has determined that identification and implementation of wetland mitigation projects through dedicated FWP staff will cost effectively address this Federal-aid program requirement; and

WHEREAS, the Parties have determined that it would be mutually beneficial to supplement FWP staffing above normal levels which were established at pre-TEA-21 highway program levels until additional staff is obtained through Montana's executive planning process or evaluation determines it is not a cost effective expenditure of Federal-aid funding; and

WHEREAS, the Parties have determined that any supplemental staffing above normal levels would provide priority assistance relative to wetlands mitigation on federal-aid highway construction projects contemplated or under design by MDT and as prioritized by MDT; and

WHEREAS, the Parties have determined that this position will have the title "Montana Wetlands Legacy Coordinator". (See attached position description for responsibilities).

WHEREAS, MDT is willing to use Federal-aid funds to pay FWP for supplemental staffing to provide these functions on a pilot project basis; and

WHEREAS, MDT will contribute no more than \$30,000 annually towards salary and benefits of one full time employee and actual travel and per diem expended on MDT project development.

WHEREAS, FHWA has indicated and agrees that Montana's apportioned Federal-aid highway funds can be used to support this agreement and would be eligible for reimbursement at a Federal-aid match rate of 86.58 percent and that the non-Federal match for this project will be from non-MDT state funds contributed by FWP or other (non-MDT) project partners.

WHEREAS, projects requiring Federal-aid investment resulting from this position's efforts must be developed in accordance with Federal-aid Program regulations including those related to competitive bidding, right-of-way acquisition and Davis-Bacon wage rates.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the signatory parties to this Agreement concur with the following responsibilities and terms.

I. AGENCY RESPONSIBILITIES

A. MDT Shall:

1. Program a federal-aid project to track costs and support payment to FWP for the costs contemplated by this Agreement, including:
 - \$30,000 annually in Federal-aid towards salary and benefits for one (1) full-time employee (meeting the professional standard described in Attachment A). Attachment A is attached by reference to this Agreement.
 - Actual travel and per-diem at state government rates as needed to support the MDT project development contemplated by this Agreement.
 - It is anticipated that total annual Federal-aid needed for these services will not initially exceed \$90,000 plus per diem expenses over a three year period. Actual costs cannot be precisely anticipated because of uncertainty regarding the amount of MDT-related travel.

- MDT shall initiate a quarterly funding transfer once an offer of employment has been proffered by FWP.
2. Obtain the necessary state of Montana budget authority to expend the Federal-aid funds transferred to FWP for the benefit of this project.
 3. Upon receipt of notification of an employment offer, transmit payment equal to either the quarterly total of funds needed to support the services contemplated by this Agreement or a prorated portion of funds dependent upon timing within the initial quarter of the employment offer.
 4. For subsequent quarters or pro-rated portions of quarters consistent with the extension, modification or termination of this project; MDT will transfer anticipated funding for a quarter to FWP via the SABHRS inter-unit funding transfer mechanism.
 5. Review for approval, quarterly FWP submittals of actual account of expenditures for salaries, benefits, travel and indirect costs as drawn against previous state payment in support of work contemplated in paragraph 1.B.1. and submit to FHWA for re-imbusement.
 6. If the MDT Project Manager agrees with the FWP quarterly account of expenditure as submitted, an approval will be transmitted to the FWP Project Manager within ten (10) working days. If the MDT Project Manager disagrees with this submittal, a meeting to clarify the account of expenditures will be requested within ten (10) working days. In the event of a disagreement over the account of expenditures, MDT pledges to negotiate in good faith towards a reconciliation of the disputed amount.
 7. Reconcile and adjust federal-aid project funding and/or state payments to FWP at the point of Agreement extension, modification, or termination and upon completion of this cooperative agreement make any adjustments needed in Federal-aid with FHWA.
 8. Provide training to the individual selected for this position on Federal-aid Highway program requirements relative to developing and implementing wetland mitigation projects.
 9. Hold quarterly meetings with FWP to establish priorities and evaluate work performed under the agreement.
 10. Hold meetings as requested with FHWA to apprise them on status of this pilot effort and make all Federal-aid fiscal information available for their review.

B. FWP Shall:

1. FWP shall be responsible for overhead expenses and expending non-Federal funds on work performed under this agreement equal to at least the non-Federal match of 13.42 percent. (NOTE: this sum will be equal to or greater than the Federal-aid transferred divided by 86.58 percent.)
2. FWP or other project partners are responsible for obtaining State budget authority to expend State funds.

3. FWP or other project partners are responsible for obtaining authority for a "full time equivalent" through Montana's Executive Planning Process.
4. FWP shall supplement its existing staff with qualified staff as detailed in Attachment A, and use the funds provided under this Agreement to pay the costs of salaries and associated benefits and to reimburse reasonable travel expenses in accordance with the State Travel Policy, Chapter 1-0300 of MOM Vol. I, Employee Travel, which is incorporated into this agreement by reference.
5. FWP shall ensure that 100% of the supplemental staff contemplated by this Agreement is detailed to work on acquisition of wetlands for the priority projects identified by MDT in accordance with the coordination procedures defined in I.D. unless detailing to other projects is agreed to by the MDT Project Manager.
6. FWP shall make the supplemental staff contemplated by this agreement available to MDT for training in the Federal-aid Highway program for a period of time agreed to by MDT and FWP.
7. FWP shall ensure that the supplemental staff identified in Attachment A shall keep daily time records identifying the number of hours spent working on each specific MDT project and any other work tasks such as those listed under I.D. relative to coordination. These records shall account for 100% of the time worked by supplemental staff, including any time spent on non-MDT work. In addition, FWP shall keep accurate and separate accounting records of all receipts and disbursements of all funds received pursuant to this Agreement and produce such records for examination as required by MDT or FHWA and shall permit extracts and copies to be made by these other signatory agencies or their duly authorized representatives. FWP shall keep records substantiating hours and costs billed pursuant to this Agreement for a period of at least three (3) years after the final billing is submitted. These records shall be subject to audit by MDT, as appropriate.
8. Hold quarterly meetings with MDT to evaluate work performed under this Agreement.
9. Submit quarterly accounts of expenditure based on 1.B.3. to MDT project manager for reconciliation against quarterly advance payment.
10. Upon receipt of initial payment, hire additional staff person as expeditiously as possible to support work contemplated by this agreement and consistent with attachment A.
11. In the event of disagreement over statements of expenditure, negotiate in good faith towards reconciliation of the disputed amount, continue the priority review of highway construction projects throughout negotiations as long as current advance state payment is sufficient to cover costs, and credit the MDT for any amount determined to be a FWP overcharge.
12. FWP shall ensure that comments it provides late in the project development process are consistent with those provided to MDT on plans, programs, and within early project development.

C. FHWA Shall:

1. Approve programming a Federal-aid project to accomplish the work contemplated by this Agreement at the Federal-aid reimbursement rate of 86.58 percent.
2. Credit non-Federal contributions from FWP and other non-MDT partners towards the required non-Federal match of 13.42 percent.
3. Reimburse the state immediately upon notification from MDT that a quarterly account of expenditure has been reconciled.

D. Coordination:

1. On a quarterly basis, MDT will establish and submit a priority listing of projects to FWP that will guide FWP supplemental staff efforts in the priority of wetland mitigation projects. This list will be based on the needs for wetlands credits anticipated by MDT relative to the tentative construction program.
2. Initially, MDT and FWP will hold monthly meetings to discuss coordination of the activities of this position. After a reasonable start-up period, the scheduling of these meetings may be changed at the discretion of the project managers.
3. Both MDT and FWP agree that ready and reasonable access will be provided to working level staff of the other agency in an effort to minimize the need for formal meetings.

While the focus will be on locating and developing quality wetland mitigation projects for priority MDT projects, FWP supplemental staff may also be involved in other tasks which support agency coordination and which serve to expedite the implementation and improve the permitting predictability for the MDT's highway construction program and compliance with the statutes and regulations for which FWP bears responsibility. Examples of other tasks that may be assigned and prioritized at the request of MDT and with concurrence of FWP include, but are not limited to:

- Review and provide comments on projects for programming,
- participate in agency scoping activities,
- provide detailed input on highway improvement alternatives under discussion, and
- review and provide comments on systems-level planning documents.

Input at these times will relate to the statutes and regulations for which FWP bears responsibility. These opportunities for input will inform MDT of FWP concerns early in the project development process. The concerns

expressed will be consistent with those provided to MDT in late phases of project development.

II. PERFORMANCE OBJECTIVES

- A. A. The FWP agrees to meet the goals established by these performance indicators:
1. During the term of this three-year agreement the supplemental staff will be responsible for initial identification and continued guidance and support through to successful completion, of at least five off-site wetland mitigation projects developed or programmed for development by MDT.
 2. These five mitigation projects shall be in no less than three of the sixteen major Montana watersheds and shall meet all Federal requirements for development under the Federal-aid Highway program and shall result in wetlands credits for the benefit of highway construction projects as prioritized by MDT.
 3. The MDT and FWP will assess the performance of this position at the end of each fiscal year of this agreement. MDT will identify priority watersheds for the following year.
FWP will document and provide the results of the assessment to MDT

III. GENERAL TERMS

- A. Length of Agreement. The length of this Agreement is three (3) years from the date of signature of the last signing party unless extended or terminated as provided in II.B. and II.C.
- B. Modification and Extension. This Agreement may be modified, amended or extended by the mutual Agreement of the signatory parties.
- C. Termination. This Agreement may be terminated by either the MDT or FWP upon sixty (60) days written notice to the point of contact/project manager in the other agency if the party requesting termination has demonstrated that other agency has not substantially fulfilled the responsibilities and terms of the Agreement after being provided with notice and thirty (30) days to remedy the situation.
- D. Point of Contact/Project Managers.
1. The Point of Contact/Project Manager in each signatory agency is as listed below unless such responsibilities delegated by this individual.

a. MDT:

Name: Joel Marshik, Manager
Address: Environmental Services Unit
Montana Department of Transportation
P.O. Box 201001
Helena, MT 59620-1001
Tel: (406) 444-7632
Fax: (406) 444-7245
E-mail: jmarshik@state.mt.us

b. FWP:

Name: Tom Hinz

Address: Migratory Bird/ Wetlands Coordinator

Montana Fish, Wildlife and Parks

P. O. Box 200701

Helena, MT 59620-0701

Tel: (406) 444-3248

Fax: (406) 444-4952

Email: thinz@state.mt.us

c. FHWA:

Name: Dale Paulson, Program Development Engineer

Address: Federal Highway Administration

2880 Skyway Drive

Helena, MT 59602

Tel: (406) 449-5303, ext.239

Fax: (406) 449-5314

E-mail: dale.paulson@fhwa.dot.gov

E. Required Clauses.

1. During the performance of this Agreement, the parties agree to abide by the terms of Executive Order 11246 on non-discrimination and will not discriminate against any person because of race, color, religion, sex or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex or national origin.
2. No member of or delegate to Congress, or appointed transportation official or Commissioner, shall be admitted to any share or part of this Agreement or any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.
3. The parties agree that in any contracts to be developed and awarded pursuant to this Agreement all design, plans, specifications, estimates of costs, construction, utility relocation work, right-of-way acquisition procedures, acceptance of the work and procedures in general shall, at all times, conform to the applicable federal and state laws, rules, regulations, orders and approvals, including, specifically, procedures and requirements relating to labor standards, equal employment opportunity, non-discrimination, compliance with the Americans with Disabilities Act, anti-solicitation, information, auditing and reporting provisions.

F. Continuation of Existing Responsibilities.

1. The parties to this Agreement are acting in an independent capacity in the performance of their respective functions under this Agreement, and regardless of the funding source for any supplemental staff to be hired by FWP to support

wetland mitigation on highway construction projects, such staff shall not be construed as an officer, agent or employee of either the MDT or FHWA.

2. In no way do the FWP, MDT or FHWA intend to abrogate through this Agreement any obligations or duties to comply with the regulations promulgated under the 1973 (federal) Endangered Species Act as amended, the 1958 (federal) Fish and Wildlife Coordination Act as amended, the National Environmental Policy Act of 1969, or the Clean Water Act of 1977 (as amended).

G. Other Agreements.

1. This Agreement does not preclude the signatory agencies from entering other inter-agency agreements relative to their respective roles and responsibilities; however, any other agreements should be consistent with this Agreement.

APPROVED FOR LEGAL SUFFICIENCY

Date: _____ By: _____
Montana Department of Transportation

Date: _____ By: _____
David A. Galt, Director
Montana Department of Transportation

Date: _____ By: _____
Jeff Hagener, Director
Montana Fish, Wildlife and Parks

Date: _____ By: _____
Janice Brown, Montana Division Administrator
Federal Highway Administration

ATTACHMENT A

Professional Standards for Supplemental Staff

One (1) specialist with knowledge in the areas of wetland ecology; wetland wildlife biology and habitat preferences; and the principles of wetland/riparian restoration and conservation in response to an increasing public desire to protect, conserve, and develop wetlands and riparian restoration and conservation. This position requires a thorough knowledge of Montana laws, ARM rules, regulations and policies relating to wetlands and migratory birds; and knowledge of other agencies' and organizations' wetlands/wildlife programs, funding and personnel. It also requires a general knowledge of Federal laws relative to wetlands and the Federal-aid Highway program. In addition,

the ability to travel is mandatory. The position will be in the XXXX Class Code at a Grade 15.