

RESOLUTION NO. 3619

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A CONSTRUCTION AGREEMENT WITH THE STATE OF MONTANA FOR CERTAIN FUTURE IMPROVEMENTS ON AND ALONG TATRO STREET IN MILES CITY, MONTANA.

WHEREAS, Tatro Street is a Federal Aid Urban City Street, and the State of Montana and the City of Miles City desire to receive Federal funds for certain improvements on and along Tatro Street;

AND WHEREAS in order to receive such funding, certain obligations between the State and the City must be agreed to;

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:

1. The City of Miles City Construction Agreement [for] City-Maintained Route, between the State of Montana and the City of Miles City, attached hereto as Exhibit "A", and incorporated herein by reference, is hereby approved and adopted by this Council subject to final written approval of the City Attorney.
2. The Mayor of the City of Miles City, upon written approval of the City Attorney, is hereby empowered and authorized to execute said Construction Agreement on behalf of the City of Miles City and bind the City of Miles City thereto; and
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Construction Agreement and bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 13th DAY OF AUGUST, 2013.



C.A. Grenz, Mayor

ATTEST:



Lorrie Pearce, City Clerk

3619

**CITY OF MILES CITY
CONSTRUCTION AGREEMENT
CITY-MAINTAINED ROUTE**

THIS AGREEMENT is made and entered into by and between the State of Montana, acting by and through its Department of Transportation, hereinafter called the State, and the City of **Miles City**, a Montana **City**, hereinafter called the City.

WITNESSETH THAT:

THE PURPOSE OF THIS AGREEMENT IS TO SET FORTH THE RESPONSIBILITIES AND DUTIES OF THE STATE AND THE CITY WITH RESPECT TO A FEDERAL AID URBAN CITY STREET AND ADJACENT PEDESTRIAN FACILITIES PROJECT WITHIN THE CITY OF MILES CITY, MONTANA.

I. WHEREAS, the State and City propose to construct and/or reconstruct a certain highway **AND ADJACENT PEDESTRIAN FACILITIES (SIDEWALKS)** in and through the City, the construction being known as Federal Aid Project No. **STPU 8014(2)**, also known as **Tatro Street – Miles City**, and

WHEREAS, the construction will be over and upon Route **U-8014** in the City of **Miles City**, beginning at approximately RP **0.0 (intersection of MT Highway 59 and Tatro Street (U-8014))** and extending easterly approximately **0.6** mi to RP **0.6 (Intersection of Milwaukee Street and Montana Avenue)**, and

WHEREAS, the State and City desire to receive Federal funds to construct the highway, and

WHEREAS, in accordance with the State's agreement with the Federal Highway Administration (FHWA) of the U. S. Department of Transportation, the State must ensure that certain requirements are met in order for the State to fulfill its obligations to the FHWA and for the project to be eligible for federal funds. Accordingly, the State includes federal requirements, which are among those hereinafter set forth, for this project, and the City agrees to them, and

WHEREAS, this document must be duly executed and on record with the State and FHWA before the work contemplated can be awarded to contract, and

WHEREAS, the City hereby concurs in the designation of the highway which was designated under Section 60-2-110, MCA, and

WHEREAS, the City desires to have the construction done, the City deeming it to be a valuable and beneficial consideration,

II. NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

AT STATE EXPENSE, THE STATE AGREES TO DESIGN THE PROJECT, LET IT TO CONTRACT AND ADMINISTER THE CONTRACT FOR CONSTRUCTION AND WILL PERFORM ALL THE REMAINING FUNCTIONS AND DUTIES AND RESPONSIBILITIES SET FORTH HEREIN IN EXCHANGE FOR WHICH THE CITY AGREES THAT UPON COMPLETION OF THE PROJECT, DEEMING THE CONSTRUCTION A GOOD AND VALUABLE CONSIDERATION, IT WILL PERFORM ALL OF THE FUNCTIONS AND DUTIES AND RESPONSIBILITIES SET FORTH IN THIS AGREEMENT. THE DUTIES AND RESPONSIBILITIES OF EACH PARTY TO THIS AGREEMENT ARE LIMITED TO THE PROJECT AREA FROM RP 0.0 TO RP 0.6.

(A) The City agrees to conform in all regards to Chapter 8 of Title 61, MCA, and will not take any action, by enacting an ordinance or otherwise, in contradiction of the traffic laws in Chapter 8 of Title 61, MCA, with specific reference, but not limited to, the following matters:

(1) Installing any signs, signals, or markings not in conformance with the Standards approved by the FHWA pursuant to 23 USC §109(d).

(2) Establishing a speed limit less than twenty-five (25) miles per hour in any urban district on the highway.

(3) Establishing a speed limit of less than thirty-five (35) miles per hour outside an urban district on the highway. The City will modify or alter such established speed limits on the highway after a traffic and engineering investigation is made at the request of the State.

(4) Erecting any markings, sign, signal or traffic control device that will give preference to local routes which intersect with the highway and no sign, signal or traffic control device will be erected or constructed, nor shall the establishment or modification of any speed zone, parking regulation or traffic marking which will affect traffic on the highway be made without proper traffic and engineering study indicating that such markings, sign, signal or traffic control device is required.

(5) Not requiring the stopping of all traffic at all intersecting streets, alleys and driveways before entering the highway. Where the City considers that such traffic control creates a hazardous situation, they may modify the traffic control devices as may be in the public interest from a safety and convenience standpoint.

(7) Prohibiting parallel parking on the highway; and

(8) Allowing stopping, standing or parking of a vehicle in a place prohibited by §61-8-354, MCA.

(9) No changes to existing lighting within the City Limits is proposed other than relocation of existing poles that are in conflict with the construction; and the city, town or special improvement district shall continue to be responsible for the cost of operation and maintenance of the lighting system. If and when the cost of energy or maintenance is raised by the utility company, the city, town or special improvement district shall pay their proportionate share of the rate increase.

(B) The City will service, maintain and pay the cost of operating all improvements embraced by this agreement. As further consideration, the City agrees to accept any and all maintenance and other responsibilities pursuant to any applicable SWPPP and NOI administered by the Department of Environmental Quality. These responsibilities will be accepted by the City at the time of final inspection. At that time the SWPPP will be transferred to the City, and the City agrees to execute any necessary documents or take any other steps necessary for the transfer of responsibility for the SWPPP and the NOI at the appropriate time. The City agrees to indemnify and hold harmless the State, including the Department, for any claim, damage, loss or cause of action arising from, due to or allegedly due to the negligence of the City or its employees or the failure of the City to perform the maintenance activities described herein.

(C) If during the construction of any sections of the above mentioned street, should the State and/or the FHWA, on account of unfavorable weather or other conditions not the fault of the contractor, authorize a suspension of construction operations thereafter and until the State and/or the FHWA issue an order for the resumption of construction operations, the maintenance of the sections under construction will be by and at the expense of the City.

(D) In addition to the specific signs, signals and traffic control devices which may be shown on the plans, further restrictions as to parking, stopping and speed limits are set forth in the attached drawing labeled "Exhibit A," that exhibit being part of this agreement.

(E) Should the City incorporate beyond the present City limits, and such newly annexed area include portions of this Federal Aid Project not now within the City limits, then this agreement, by reference herein, will also apply to the newly annexed area.

(F) The City has reviewed and approved the plans.

(G) The City will continue to maintain the constructed facility and enforce the ordinances, laws and/or regulations necessary and essential for the operation of the improvements as planned.

(H) All signs shall be maintained by the City.

(I) Sidewalk Maintenance.

(1) Upon completion of and in consideration for the project, and at no additional cost to the State, the City agrees to assume full responsibility for and control of maintenance of the sidewalks bordering the project. Specifically, the City will maintain or cause to be maintained the sidewalks adjacent to both sides of **Tatro Street and Milwaukee Street** from **MT Highway 59** to **Montana Avenue**. The City may, in its discretion, enforce state laws and its local ordinances, if any, to recover all costs associated with its sidewalk maintenance activities from persons or entities who own property adjacent to the sidewalks and/or who receive the benefit of the maintenance performed.

(a) For purposes of this agreement, "Maintenance " means: removal of and/or surface repair of any obstacles or impediment to the safe and efficient use of the sidewalk by pedestrians, including removal of snow and ice, repair of chipped, fractured, or broken walk or curb from any cause including but not limited to frost, landscaping (tree roots), or permitted encroachments.

(b) The City has the authority and responsibility to issue encroachment permits to private parties to allow for the placement or installation of encroachments on the sidewalk within the right of way according to the terms and conditions established by the City by ordinance or rule subject only to insuring that any permit issued does not in any way interfere with the use of the vehicle travel lanes nor with the safe and efficient use of the sidewalk by pedestrians. As an integral part of the responsibility is the authority and duty to remove any unpermitted encroachment.

(c) The City may by ordinance or resolution establish parking rules and regulations, including installation of metered parking.

(d) The City may by ordinance or regulation impose landscaping and/or sidewalk construction responsibilities on property owners whose property abuts the state facility provided that any new sidewalk construction completed under the City authority on the highway right of way meets or exceeds the specifications and standards of the department including compliance with any state or federal handicapped access laws and regulations.

(2) If, during its inspections, the City encounters a condition on the sidewalk that it believes is caused by a design or construction defect or by the negligent act or omission of a State agent or employee, the City will immediately notify the State of the existence and location of the defect and provide the State with a detailed explanation of the engineering basis for its belief that the condition is caused by a design or construction defect or the negligent act or omission of a State agent or employee.

(3) The State agrees to protect, indemnify, defend and save harmless the City against and from all claims, liabilities, demands, causes of action, judgments, and losses (including costs and attorney's fees incurred by the City in the defense

thereof) to them arising in favor of or asserted by any person or entity on account of personal injury, death or damage to property arising solely out of, or in connection with, a defect in the State's design or construction of the project (including, but not limited to, a defect in the State's construction or design of the sidewalks bordering the project as described above) or from the negligent or intentional act of department employees that in any way interfere with or damage the maintenance work of the City.

The City agrees to protect, indemnify, defend and save harmless the State and Department of Transportation against and from all claims, liabilities, demands, causes of action, judgments, and losses (including costs and attorney's fees incurred by the State in the defense thereof) to them arising in favor of or asserted by any person or entity (including, but not limited to, the City) on account of personal injury, death or damage to property arising, in whole or in part, out of, or in connection with, the maintenance of the subject sidewalks.

(4) This section does not supersede, discharge, or extinguish any prior agreement between the parties, nor will any future agreement between the parties supersede, discharge, or extinguish this agreement, unless by specific reference and in clear terms.

(J) The City will continue adequate engineering capabilities to ensure that a continuing traffic engineering function is carried out on the project.

(K) The City agrees to regulate utility occupancy on the right-of-way of this completed project in conformance with occupancy regulations that will comply with or be more restrictive than the requirements of ADMINISTRATIVE RULES OF MONTANA 18.7.201 thru 18.7.241 governing "RIGHT OF WAY OCCUPANCY BY UTILITIES."

(L) **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 and Clark County.

III. DURING THE PERFORMANCE OF THIS AGREEMENT, THE CITY, FOR ITSELF, ITS ASSIGNEES AND SUCCESSORS IN INTEREST, AGREES AS FOLLOWS:

A) **Compliance With Title VI Of The Civil Rights Act Of 1964 For Federal-Aid Contracts**

(1) Compliance with Regulations: The City 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 City, 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 City shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the City for work to be performed under a subcontract, including procurements of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the City of the City's obligations under this Agreement and the Regulations relative to nondiscrimination.

(4) Information and Reports: City 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 Department or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City 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 City's noncompliance with the nondiscrimination provisions of this Agreement, Department may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,

(a) withholding payments to the City under the Agreement until the City complies, and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: City 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. City will take such action with respect to any subcontract or procurement as the Department or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event City is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the City may request the Department to enter into the litigation to protect the interests of the State, and, in addition, the City 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 §49-3-207, MCA, City 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) City will comply with all regulations relative to implementation of the Americans With Disabilities Act.

(2) City will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: "City 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 City. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the City."

(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 PART 26

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

"The City, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The City shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the City 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.

THE PARTIES UNDERSTAND AND AGREE THAT THE FAILURE OF EITHER PARTY TO PERFORM THE DUTIES AND RESPONSIBILITIES SET FORTH IN THIS AGREEMENT MAY BE DEEMED A MATERIAL BREACH OF THE CONTRACT FOR WHICH ANY AVAILABLE REMEDY PROVIDED BY LAW MAY BE ASSERTED IN THE DISTRICT COURT. IN ANY LEGAL PROCEEDING TO ENFORCE ANY PROVISION OF THIS AGREEMENT OR FOR BREACH OF THIS AGREEMENT, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER ITS COSTS AND ATTORNEY'S FEES.

IN WITNESS WHEREOF, the Department's authorized representative has signed on behalf of the State of Montana, and the **Mayor** of the City of **Miles City**, on behalf of the City, has signed and affixed hereto the seal of the City.


STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

By  9/1, 2013
Administrator - Engineering Division

By 
Approved for Legal Content

ATTEST:

CITY OF MILES CITY

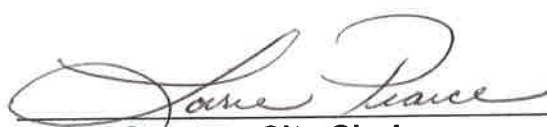
By 
~~Becky Stanton, City Clerk~~
Lorrie Pearce

By ~~~~
C.A. Grenz, Mayor

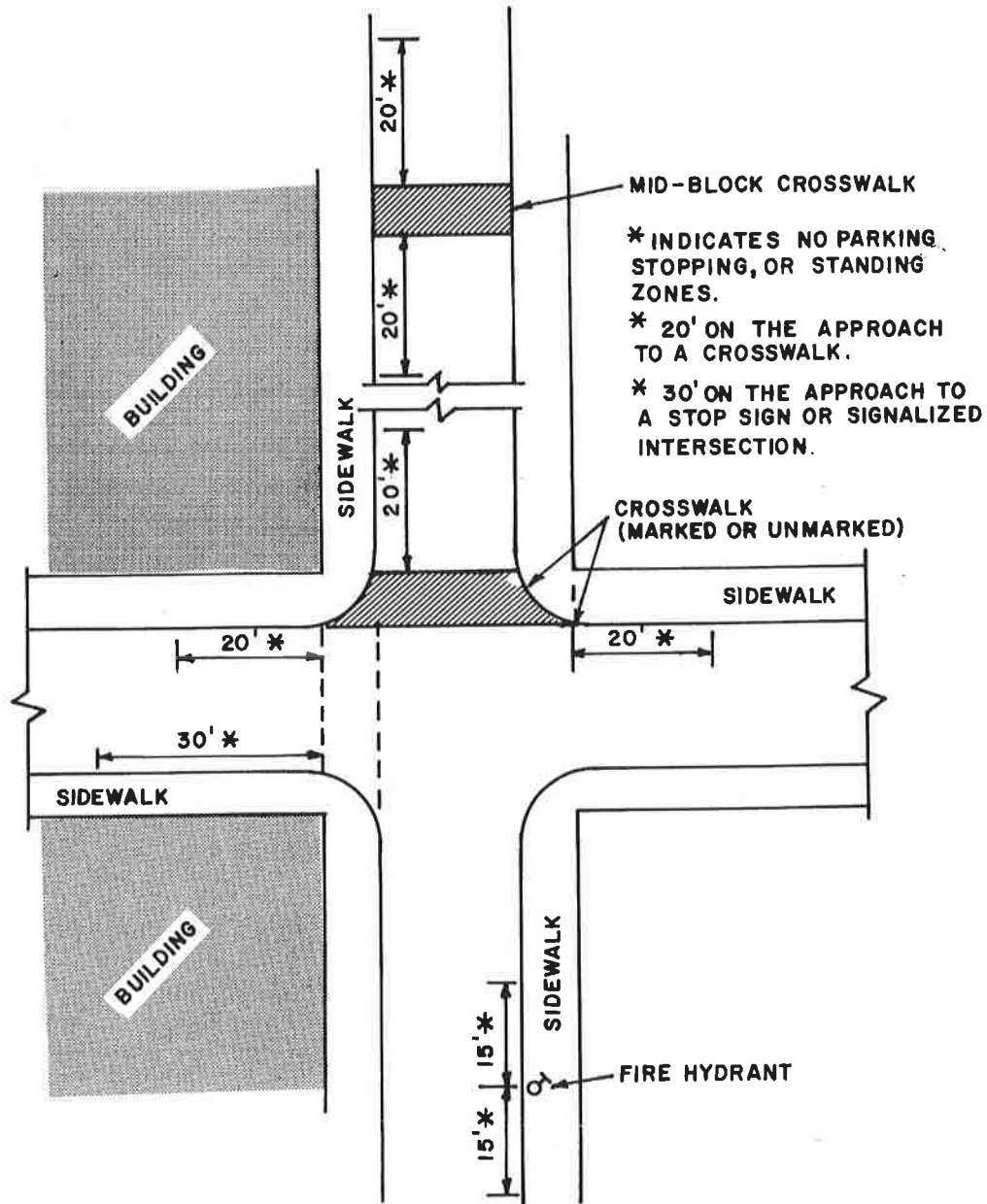
APPROVED AS TO FORM:

By ~~~~
City Attorney

Lorrie Pearce
I, ~~Becky Stanton~~, City Clerk of the City of **Miles City**, hereby certify that this agreement was regularly adopted by the City Council at a meeting held on the Aug day of 13, 2013; and that the **City Council** authorized the City **Mayor** to sign this agreement on behalf of the **City Council**.


~~Becky Stanton, City Clerk~~
Lorrie Pearce

"EXHIBIT A"



NO PARKING ZONES
As Defined by
MONTANA VEHICLE CODE
Prepared by Department of Transportation