

AMENDMENT 2

TO THE

PROGRAMMATIC AGREEMENT

BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION, MONTANA DIVISION

AND

THE MONTANA DEPARTMENT OF TRANSPORTATION

REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS CATEGORICAL

EXCLUSIONS FOR FEDERAL-AID HIGHWAY PROJECTS

The original Agreement was signed by Kevin McLaury, FHWA Division Administrator, Montana Division, on January 6, 2016 and Michael Tooley, MDT Director, on December 23, 2015.

Amendment 1 to the agreement was then signed by Lucia Olivera, FHWA Division Administrator, Montana Division, on January 6, 2021 and Michael Tooley, MDT Director, on December 31, 2020.

The purpose of the original Agreement is to authorize MDT:

- A. To determine on behalf of FHWA whether a project qualifies for a CE specifically listed in 23 CFR 771.117; and
- B. To certify to FHWA that an action not specifically listed in 23 CFR 771.117, but that meets the CE criteria in 23 CFR 771.117(a) and (b) qualifies for a CE.

As referenced in Section VIII. AMENDMENTS and Section IX. TERM, RENEWAL, AND TERMINATION of the original Agreement, this Amendment 2:

- A. Modifies the text of the original agreement as follows:
 1. The first "Whereas" paragraph, page 1, is modified to read, "Whereas, the National Environmental Policy Act of 1969 (NEPA), 42 USC 4321-4370h (2014), ~~and the Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508)~~ directs Federal agencies to consider the environmental impacts of their proposed major Federal actions through the preparation of an environmental assessment (EA) or environmental impact statement (EIS) unless a particular action is categorically excluded;"
 2. Section II.B is modified to read, "To certify to FHWA that an action not specifically listed in 23 CFR 771.117, but that meets the CE criteria in ~~40 CFR 1508.4 and~~ 23 CFR 771.117(a) and (b), qualifies for a CE."
 3. Section III.C is modified to read, "~~40 CFR parts 1500-1508 Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94, 129 Stat. 1312, Sec. 1315 (Dec. 4, 2015); Infrastructure Investment and Jobs Act, Pub. L. 117-58.~~
 4. Section IV.A.1.b.viii is modified to read, "viii. Requires the "use" of properties protected by Section 4(f) of the Department of Transportation Act (49 USC 303/23 U.S.C. § 138) ~~that cannot be documented with an FHWA de minimis determination.~~"

5. Section IV.A.1.c is modified to read, "MDT is not authorized to approve actions not specifically listed as CEs in 23 CFR 771.117, but meet the requirements of a CE under 40 CFR 1508.4 and 23 CFR 771.117(a). Instead, MDT shall certify that an action will not result in significant environmental impacts if MDT concludes that the action qualifies for a CE and the action does not involve unusual circumstances that warrant the preparation of an EA or EIS. MDT shall submit this certification to FHWA for approval prior to the time FHWA contemplates its next approval or grant action for the project."
- B. Extends provisions of the original Agreement and Amendment 1 for a period of five (5) years, ending January 6, 2031.

Execution of this Amendment 2 and implementation of its terms by both parties provides evidence that both parties have reviewed this Amendment 2 and agree to the terms and conditions for its implementation.

LUCIA HAYDEE OLIVERA  Digitally signed by
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1/12/2026

Date

Lucia Olivera
Division Administrator, Montana Division
Federal Highway Administration


Christopher Dorrington
Director
Montana Department of Transportation

1/12/26
Date