

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL RAILROAD ADMINISTRATION
THE MONTANA STATE HISTORIC PRESERVATION OFFICER
THE CITY OF KALISPELL, MONTANA
THE SURFACE TRANSPORTATION BOARD
AND
THE NORTHWEST MONTANA HISTORICAL SOCIETY
REGARDING
THE GLACIER RAIL PARK/KALISPELL CORE AREA DEVELOPMENT AND
TRAIL PROJECT
KALISPELL, FLATHEAD COUNTY, MONTANA**

WHEREAS, the City of Kalispell, Montana, (City) proposes to construct the Glacier Rail Park/Kalispell Core Area Development and Trail Project (Project or Undertaking) located in the City of Kalispell, Flathead County, Montana; and

WHEREAS, the Project consists of the following two phases: construction and operation of the new Glacier Rail Park (Rail Park), which will include 10,000 linear feet of new rail to serve industrial users in the rail park and provide a new rail turnaround adjacent to the rail park allowing for the removal of the original track in Kalispell; improvements to access roads on the north and east sides of the new Rail Park; traffic signal and roadway improvements for truck access to Montana Highway 2; and installation of utilities to each lot in the Rail Park to provide access to City water and sewer, power, gas and fiber optics (herein after referred to as Phase I); and a rail-to-trail component known as the Kalispell Trail, which will include the removal of nearly two miles of existing rail line from milepost 1225.19 to the west side of Meridian Street at milepost 1226.79, conversion of the existing rail bridge to accommodate bicycle and pedestrian use, construction of a public use recreational trail in the abandoned railroad right-of-way (ROW), and the construction of two complete street connections in the Kalispell Core Area (herein after referred to as Phase II); and

WHEREAS, Phase I of the Project must be constructed and operational, with rail traffic moved off the existing rail line, the existing rail line abandoned by BNSF Railway Company (the owner of the rail line) through a process involving the Surface Transportation Board (STB), and the ROW acquired by the City, before the City can construct Phase II of the Project; and

WHEREAS, the U.S. Department of Transportation (USDOT) has selected the City to receive Fiscal Year 2015 grant funding for construction of the Project (both Phase I and Phase II) under its Transportation Investment Generating Economic Recovery (TIGER) Program, and the Federal Railroad Administration (FRA), an operating administration of USDOT, is administering the TIGER grant; and

WHEREAS the Project is an “Undertaking” under Section 106 of the National Historic Preservation Act, as amended (54 U.S.C. § 306108) (“Section 106”) and FRA is

the lead federal agency responsible for compliance with Section 106 and its implementing regulations promulgated by the Advisory Council on Historic Preservation (ACHP) (36 CFR Part 800) for the Project; and

WHEREAS, FRA, in a letter dated March 15, 2016, initiated Section 106 consultation with the Montana State Historic Officer (MT SHPO) as required by the Section 106 regulations and FRA has continued to consult with MT SHPO through the subsequent steps of the Section 106 process; and

WHEREAS, FRA proposed an area of potential effects (APE), as defined in 36 CFR § 800.16(d), to account for direct and indirect effects of both Phase I and Phase II of the Project, and MT SHPO concurred with the APE in an email dated May 23, 2016; and

WHEREAS, in letters dated May 16, 2016, FRA notified the following federally-recognized Native American tribes about the Project and invited them to consult: the Confederated Salish and Kootenai Tribes of the Flathead Nation, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana, Crow Tribe of Montana, Apache Tribe of Oklahoma, and Blackfeet Nation; of those contacted, the Confederated Salish and Kootenai Tribes of the Flathead Nation responded in a letter dated June 28, 2016 indicating that it was not aware of any sites of interest in the APE and expressed approval of the Project; and none of the other tribes responded; and

WHEREAS, FRA, in emails sent on April 26, 2016, February 23, 2017, and March 10, 2017, invited the Northwest Montana Historical Society (Historical Society), the Kalispell Business Improvement District (KBID), the Flathead County Economic Development Authority (FCEDA), and the Great Northern Railway Historical Society (GNRHS) to participate in Section 106 consultation, and the Historical Society, KBID, and FCEDA accepted the invitation to consult and GNRHS declined the invitation to consult; and

WHEREAS, FRA has invited the City to sign this Memorandum of Agreement (MOA) as an Invited Signatory because the City would be the recipient of the TIGER funding and, as such, would have responsibility for implementing mitigation commitments specified herein, and the City has accepted; and

WHEREAS, FRA has invited the Historical Society to sign this MOA as an Invited Signatory because it may have responsibility for assisting the City in implementing certain mitigation commitments specified herein, and the Historical Society has accepted; and

WHEREAS, FRA has invited KBID and FCEDA to participate in this MOA as Concurring Parties, and KBID has accepted to be a Concurring Party and FCEDA will remain a Consulting Party; and

WHEREAS, in a letter dated April 5, 2017 and as allowable under the Section 106 regulations at 36 800.2(a)(2), STB designated FRA as the lead federal agency to fulfil

STB's and FRA's collective Section 106 responsibilities with regard to the portion of the BNSF-owned rail line that is the subject of the rail-to-trail phase of the Project; and

WHEREAS, STB remains responsible for Section 106 compliance for its abandonment action regarding the portion of the BNSF-owned rail line that is not part of the TIGER project; and

WHEREAS, has invited STB to sign this MOA as an Invited Signatory and STB has accepted; and

WHEREAS, the City's consultants conducted cultural resources investigations for both phases of the Project, which resulted in two reports (*Class III Cultural Resource Investigations of the Glacier Rail Park in Kalispell, Montana, Phase I, Parcels A&B*, Historical Discoveries, March 2016; *Section 106 Cultural Resources Inventory, Glacier Rail Park/Kalispell Core Area Development and Trail Project City of Kalispell, Flathead County, Montana*, Rabbitbrush Archaeological Services, LLC, December 2016); and

WHEREAS, FRA has identified historic archaeological and architectural properties in the APE which include the following architectural properties listed on or eligible for listing on the National Register of Historic Places (NRHP): the Woodland Park - Eastside Historic District, the Great Northern Railroad, the Kalispell Flour Mill, the Great Northern Railway Depot, and the Flathead Wholesale Grocery, and FRA presented its findings in a letter to MT SHPO dated February 22, 2017 and MT SHPO concurred with FRA's findings in a letter dated March 14, 2017; and

WHEREAS, FRA, as documented its letter of February 22, 2017, has determined that Phase I of the Project will have No Effect on historic properties and Phase II of the Project will have No Adverse Effect on Woodland Park - Eastside Historic District, and MT SHPO concurred with these determinations in its letter of March 14, 2017; and

WHEREAS, FRA, as documented in its letter of February 22, 2017, has determined that Phase II of the Project will have an adverse effect on the Great Northern Railroad and on the Kalispell Flour Mill, the Great Northern Railway Depot, and the Flathead Wholesale Grocery, which are three architectural properties adjacent to the railroad ROW and were historically associated with the Great Northern Railroad, and MT SHPO concurred with FRA's adverse effect determination in its letter of March 14, 2017; and

WHEREAS, based on the information contained in the aforementioned reports and because all ground-disturbing activities necessary to construct the Project will occur in areas disturbed by previous construction, FRA has determined that no further archaeological investigations are necessary for the Project; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), FRA notified the ACHP on April 12, 2017 of its adverse effect determination with specified documentation utilizing ACHP's e106 notification system, and ACHP responded to FRA in a letter dated April 19, 2017, that it has chosen not to participate in the consultation pursuant to

36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, FRA, MT SHPO, the City, STB, and the Historical Society (each, a Signatory and together the Signatories) agree that the Undertaking will be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties.

STIPULATIONS

FRA and the City will ensure that the following measures are carried out:

I. PERSONNEL QUALIFICATION STANDARDS

The City will ensure that all historic preservation and documentation work is carried out by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior's Professional Qualification Standards for Historians or Architectural Historians (48 FR 44738-9).

III. MITIGATION

A. The following mitigation measures are required as part of FRA's approval of the Project:

1. Interpretive Signage

- (a) The Historical Society will review its collection to determine if it has information relevant to the history of the Great Northern Railroad and the importance the railroad played in the development and history of the City of Kalispell and surrounding region.
- (b) If available, the Historical Society will provide the information identified in Stipulation III.A.1(a) to the City for the City's use, at its discretion, in developing narrative and/or pictorial content for the interpretive signage (see Stipulation III.A.3).
- (c) The City will develop narrative and pictorial content for and install interpretive signage at the following locations along the Kalispell Trail (see Attachment A for a map of the proposed signage locations):
 - i. South of milepost 1225.19 and at the north end of the bridge crossing Highway 93. This sign will mark the trailhead and provide an introduction to the Kalispell Trail, including a history of when rail service first came to the Kalispell area in the late 1880s and an explanation of when and why a new rail route 11 years later resulted in moving service to a spur line.

ii. Flathead Electric Coop Substation, located roughly at the northwestern edge of Woodland Park. This sign will highlight the contributions of the Conrad Family as a founding family of the Kalispell community.

iii. Depot Park. This sign will highlight the history of the extant former Great Northern Railway Depot.

iv. Former location of the Flathead Lake Cherry Growers Association Warehouse, located at 20 North Main Street. This sign will highlight the important role of the railroad in shipping sweet cherries and the historic importance of this agricultural product in the regional economy, with the railroad, beginning in 1910, advertising the area for settlement based on its potential for growing fruit in the temperate climate and Flathead County becoming the fourth largest sweet cherry producing region in the country by the 1940s.

v. Grain Elevators located at 505 West Center Street. This sign will highlight the history of the extant structures and the historic importance of agriculture in the regional economy.

vi. Roughly at Meridian Street north of West Center Street and south of Appleway. This sign will highlight the history of the timber industry as well as the mill and log pond formerly located in this area.

(d) The City will provide drafts of the narrative and pictorial content of each sign to the Signatories and Concurring Party for review and comment in accordance with Stipulation IV.

2. Retention in Place of a Segment of Railroad Track

(a) The City will retain approximately 60 feet of railroad track in place at Depot Park, to highlight the historic association between the former railroad the Great Northern Railway Depot.

(b) Planting of Cherry Trees

(a) The City will plant cherry trees interspersed along the Kalispell Trail, with emphasis in the former location of the Flathead Lake Cherry Growers Association Warehouse at 20 North Main Street.

B. Additional optional mitigation measures. Subject to the availability of future funding and public support, the City may implement one or more of the following mitigation measures:

1. Acquisition of a decommissioned a rail car to be placed on the segment of track that is retained in place adjacent to Depot Park (see Stipulation III.A.2); and/or,
2. Commissioning for the design and installation of public artwork, to be placed along the Kalispell Trail, that is reflective of the City's railroading history; and/or
3. Commissioning for the design and installation of a water feature(s), such as a fountain or splash park, to be located along the Kalispell Trail.

If Stipulations III.B. 2 and/or III.B.3 are pursued, the City will provide drafts of the design of the public artwork and/or water feature(s) to the Signatories and Concurring Party for review and comment in accordance with Stipulation IV.

IV. PREPARATION AND REVIEW OF DOCUMENTS

The Signatories and Concurring Party agree to provide comments on all documents and materials arising from this MOA to the City within thirty (30) calendar days of receiving the submission. If the City does not receive such comments within the thirty (30) calendar-day review period, the City may assume that the non-responding party has no comments or objections. Where necessary, the City will consult with any responding party to ensure it appropriately considers all comments received within the thirty (30) calendar-day review period before implementing the mitigation measure.

V. EFFECTIVE DATE

This MOA will be effective as of the date of its execution by all Signatories.

VI. DURATION

This MOA will expire if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time, FRA and the City may consult with the other Signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation X below.

VII. CHANGES TO PROJECT DESIGN

If the City proposes changes to the Project that may result in additional or new effects on historic properties, the City will notify FRA and MT SHPO of such changes. Before the City takes any action that may result in additional or new effects on historic properties, FRA, MT SHPO, the City, and other consulting parties as appropriate, will consult to determine the appropriate course of action. This may include, as appropriate, revision to the APE, assessment of effects to historic properties, and treatment

measures to resolve adverse effects.

VIII. POST-REVIEW DISCOVERIES

If properties are discovered during Project construction that may be historically significant or unanticipated effects on historic properties are identified, FRA and the City will comply with 36 CFR § 800.13 by consulting with MT SHPO and, if applicable, federally recognized tribal organizations that may attach religious and/or cultural significance to the affected property; and by developing and implementing avoidance, minimization, or mitigation measures with the concurrence of MT SHPO and, if applicable, federally recognized tribal organizations.

VIII. MONITORING AND REPORTING

Each year following the execution of this MOA until it expires or is terminated, the City will provide the other Signatories and Concurring Party a summary report detailing work undertaken pursuant to the MOA's terms. This report will include any scheduling changes proposed, any problems encountered, and any disputes or objections received in the City's efforts to carry out the terms of this MOA.

IX. ADOPTABILITY

In the event that another federal agency not initially a party to this MOA receives an application for funding, license, permit or other approval for the Project as described in this MOA, that agency may fulfill its Section 106 responsibilities by notifying the Signatories that it concurs with the terms of this MOA and that it intends to rely on this MOA.

X. DISPUTE RESOLUTION

Should any Signatory or Concurring Party to this MOA object at any time to the manner in which the terms of this MOA are implemented, it will notify FRA in writing and FRA will then consult with that party to resolve the objection. If FRA determines that such objection cannot be resolved within thirty (30) calendar days, FRA will:

- A. Forward all documentation relevant to the dispute, including FRA's proposed resolution, to the ACHP with a copy to the other Signatories and Concurring Party to this MOA, and request that the ACHP provide FRA with its advice on the resolution of the objection within thirty (30) calendar days of receiving the documentation.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day time period, FRA may make a decision on the dispute and proceed accordingly.
- C. FRA will document its decision in a written response to the objection that takes into account any timely comments regarding the dispute from the Signatories and Concurring Party and will provide the ACHP, Signatories, and Concurring Party with a copy of such written response.
- D. FRA may then proceed according to its decision.
- E. The Signatories remain responsible for carrying out all other actions subject to the terms of this MOA that are not the subject of the dispute.

XI. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with ACHP.

XII. TERMINATION

If any Signatory to this MOA determines that its terms will not or cannot be carried out, that Signatory will immediately consult with the other Signatories to attempt to develop an amendment per Stipulation XI, above. If within thirty (30) calendar days (or another time period agreed to by all Signatories) an amendment cannot be reached, any Signatory may terminate the MOA upon written notification to the other Signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, FRA must either (a) execute an MOA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FRA will notify the Signatories of its course of action.

Execution of this MOA by FRA and MT SHPO and implementation of its terms evidence that FRA has taken into account the effects of this undertaking on historic properties and afforded ACHP an opportunity to comment.

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FEDERAL RAILROAD ADMINISTRATION (Signatory)

By:  Date: 7/6/17
Marlys Ostermues
Division Chief, Environmental & Corridor Planning Division
Office of Railroad Policy and Development

MONTANA STATE HISTORIC PRESERVATION OFFICE (Signatory)

By: _____ Date: _____
Mark Baumler
State Historic Preservation Officer

CITY OF KALISPELL (Invited Signatory)

By: _____ Date: _____
Doug Russell
Kalispell City Manager

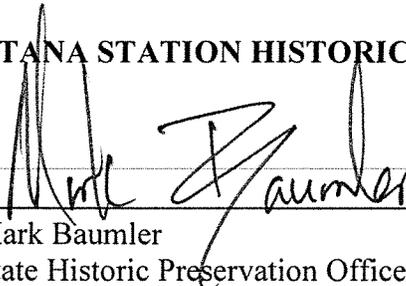
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FEDERAL RAILROAD ADMINISTRATION (Signatory)

By: _____ Date: _____
Marlys Osterhues
Division Chief, Environmental & Corridor Planning Division
Office of Railroad Policy and Development

MONTANA STATE HISTORIC PRESERVATION OFFICE (Signatory)

By:  _____ Date: 7/5/2017
Mark Baumler
State Historic Preservation Officer

CITY OF KALISPELL (Invited Signatory)

By: _____ Date: _____
Doug Russell
Kalispell City Manager

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FEDERAL RAILROAD ADMINISTRATION (Signatory)

By: _____ Date: _____

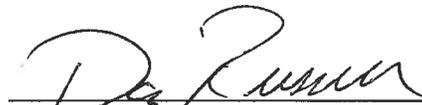
Marlys Osterhues
Division Chief, Environmental & Corridor Planning Division
Office of Railroad Policy and Development

MONTANA STATE HISTORIC PRESERVATION OFFICE (Signatory)

By: _____ Date: _____

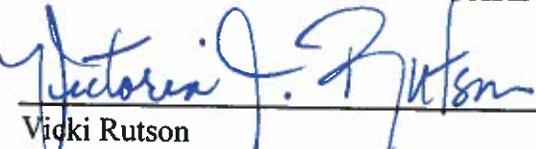
Mark Baumler
State Historic Preservation Officer

CITY OF KALISPELL (Invited Signatory)

By:  _____ Date: 6/28/17

Doug Russell
Kalispell City Manager

SURFACE TRANSPORTATION BOARD (Invited Signatory)

By:  Date June 28, 2017
Vicki Rutson
Director, Office of Environmental Analysis

NORTHWEST MONTANA HISTORICAL SOCIETY (Invited Signatory)

By: _____ Date: _____
Jacob Thomas
Executive Director

KALISPELL BUSINESS IMPROVEMENT DISTRICT (Concurring Party)

By: _____ Date _____
Pamela J. Carbonari
Coordinator

SURFACE TRANSPORTATION BOARD (Invited Signatory)

By: _____ Date _____

Vicki Rutson
Director, Office of Environmental Analysis

NORTHWEST MONTANA HISTORICAL SOCIETY (Invited Signatory)

By: _____ Date: _____

Jacob Thomas
Executive Director



6/26/2016

KALISPELL BUSINESS IMPROVEMENT DISTRICT (Concurring Party)

By: _____ Date _____

Pamela J. Carbonari
Coordinator

SURFACE TRANSPORTATION BOARD (Invited Signatory)

By: _____ Date: _____

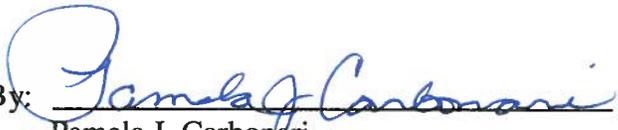
Vicki Rutson
Director, Office of Environmental Analysis

NORTHWEST MONTANA HISTORICAL SOCIETY (Invited Signatory)

By: _____ Date: _____

Jacob Thomas
Executive Director

KALISPELL BUSINESS IMPROVEMENT DISTRICT (Concurring Party)

By:  Date: 6/28/17

Pamela J. Carbonari
Coordinator