

# **RECREATIONAL TRAILS PROGRAM COOPERATIVE AGREEMENT**

## **MISSOURI DEPARTMENT OF NATURAL RESOURCES AND FEDERAL HIGHWAY ADMINISTRATION MISSOURI DIVISION**

### **Section 1: Introduction**

#### **1. Overview:**

This Cooperative Agreement (Agreement) outlines the roles and responsibilities of the Federal Highway Administration Missouri Division Office (FHWA) and the Missouri Department of Natural Resources (MDNR) pertaining to the oversight and administration of the Recreational Trails Program (RTP), which includes RTP projects awarded to MDNR as well as RTP projects sub awarded to project sponsors. The FHWA oversees the RTP, which is a Federal-aid assistance program that provides funds to States to develop and maintain recreational trails and trail-related facilities for non-motorized and motorized recreational trail users.

#### **2. Purpose:**

The purpose of this Agreement is to provide guidance; define the program and applicable laws and regulations; and document the roles and responsibilities of FHWA and MDNR with respect to project approvals and administration of the RTP. The Agreement is intended to be a living document that will be modified when needed to incorporate new legislation, additional processes, or other changes to improve program and project delivery in Missouri. This Agreement will be reviewed by FHWA and MDNR annually, upon enactment of new transportation authorization acts, or as needed.

#### **3. Background:**

The RTP was originally authorized in the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. The Transportation Equity Act for the 21st Century (TEA-21) codified the RTP in title 23 United States Code (U.S.C.) section 206 in 1998. Subsequent surface transportation authorization legislation has retained section 206.

The Fixing America's Surface Transportation (FAST) Act reauthorized the RTP for Federal fiscal years 2016 through 2020 as a set-aside of funds from the Transportation Alternative Program (TAP) under the Surface Transportation Block Grant Program (STBG).

The RTP is a Federal-aid assistance program to help the States provide and maintain recreational trails for both motorized and non-motorized recreational trail use. The program provides funds for all kinds of recreational trail uses, such as water trails, pedestrian uses (hiking, running, wheelchair use), bicycling, in-line skating, equestrian use, cross-country skiing, snowmobiling, off-road motorcycling, all-terrain vehicle riding, four-wheel driving, or using other off-road motorized vehicles. Each State develops its own procedures to solicit projects from project sponsors, and to select projects for funding, in response to recreational trail needs within the State. The RTP encourages all kinds of trail enthusiasts to work together to provide a wide variety of recreational trail opportunities.

For purposes of this Agreement and all RTP activities taking place in Missouri, use of the word "trail" includes:

- Multi-Use trails
- Hiking Trails
- Water Trails
- Equestrian Trails
- Bicycle/Mountain Bike Trails
- Off-Road Motorcycle Trails
- Off-Road All-Terrain Vehicle (ATV) Trails
- Off-Highway Four-Wheel Drive Trails
- Walking and Interpretive Trails

Section 213(g) of title 23, U.S.C., as amended by MAP-21, allows a State to opt out of the recreational trails program set-aside. To opt out of the set-aside a State must inform the FHWA of its decision to opt out no later than 30 days prior to apportionments being made for a fiscal year. **States that desire to opt out of the Recreational Trails Program set-aside shall notify FHWA via e-mail. A letter signed by the Governor, or the Governor's designee accompanying the opt-out notification should be sent to the FHWA Office of Budget's official mailbox ([BudDiv@dot.gov](mailto:BudDiv@dot.gov)) no later than September 1<sup>st</sup>.** States that do not opt out of the RTP, will receive funding equal to the amount apportioned to the State, for the RTP, in FY 2009. For Missouri, the amount to be apportioned per year will be \$1,663,399. Under 23 U.S.C. 133(h)(5)(B), each State must return 1 percent of those funds to the U.S. Secretary of Transportation for the administration of the program. This 1 percent return results in a net apportionment amount of \$1,646,765 for Missouri.

#### 4. Laws, Regulations, and Guidance:

- 23 U.S.C. 106, Project Approval and Oversight
- 23 U.S.C. 112, Letting of Contracts
- 23 U.S.C. 113, Prevailing Wage Rates (Davis-Bacon Act) (see RTP guidance)
- 290.230 RSMo, State of Missouri Prevailing Wage Rates
- 8 CFR 30-3-010, State of Missouri Prevailing Wage Rates
- 23 U.S.C. 114(b), Convict Labor (see RTP guidance)
- 23 U.S.C. 133(h), Transportation Alternatives Program (includes RTP set-aside)
- 23 U.S.C. 206, Recreational Trails Program
- 23 CFR 1.36, Compliance with other Federal Laws and Regulations
- 23 CFR 172, Administration of Engineering and Design Related Service Contracts
- 23 CFR 635.410, Buy America Requirements
- 23 CFR 771, FHWA National Environmental Policy Act (NEPA) Regulations
- 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 2 CFR 200.317 – 326, Procurement Standards
- [Project Funds Management Guide for State Grants](#)
- Fixing America's Surface Transportation (FAST) Act
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended and 49 CFR 24 Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs
- National Environmental Policy Act
- Endangered Species Act
- Clean Water Act
- National Historic Preservation Act
- [FHWA Transportation Alternatives Guidance](#) (FAST Act)
  - [Recreational Trails Program](#) section of TA guidance
  - RTP [Administrative](#) Costs
  - RTP [Education](#) Costs
  - RTP [Sub allocation](#) Requirement
- [FHWA Recreational Trails Program Guidance](#) (1999) (HTML)
  - [RTP Trail Assessments, Education and Training, and State Administrative Costs](#)
  - [RTP Federal Share and Matching Requirements](#)
- [MDNR Recreational Trails Program Project Administration Guide](#) (updated annually)
- [MDNR Recreational Trails Program Grant Application Guide](#) (updated annually)

All grants administered by MDNR must follow the [Missouri Department of Natural Resources Terms and Conditions](#).

NOTE: A Federal-aid highway is defined as a highway on the Federal-aid highway system (the National Highway System (NHS) and interstates) and all other public roads not classified as local roads or rural minor collectors. The provisions of the Davis-Bacon Act, rules on the procurement of professional services, and the convict labor provisions are applicable to projects that are within the right-of-way of a Federal-aid highway, and not to non-highway projects or to projects outside of a Federal-aid highway. In addition, state procurement laws may apply to projects meeting the definition of public works.

The RTP Legislation in 23 U.S.C. §206(h)(2) exempts the RTP from the requirements commonly referred to as Section 4(f) requirements of the Department of Transportation Act of 1966 (in effect before the repeal of that section and now found in 23 U.S.C. §138; 49 U.S.C. §303). This allows the U.S. Department of Transportation/FHWA to approve RTP projects, which are located on land within publicly owned parks or recreation areas without requiring a waiver or other Section 4(f) documentation.

#### **5. Required Contract Provisions and Other Federal Requirements:**

All associated construction contracts shall physically incorporate Form FHWA-1273, which lists contract provisions that are required to be included in all Federal-aid highway contracts. Provisions from the Form FHWA-1273 are applicable to projects funded under the RTP, and shall be included in all construction contracts.

Example of situations where the Form FHWA-1273 provisions are not required to be included in the contract:

MDNR has a grant contract that does not involve construction, as defined in 23 U.S.C. §101(a)(4). Examples would be land acquisition, development of a trail safety program, trail design and maintenance training and statewide trail planning. Contracts for projects that do not involve construction do not need to include the Form FHWA-1273 provisions.

These Federal requirements are in addition to those listed on Form FHWA-1273. The below federal requirements are not an all-inclusive list, and other federal-aid regulations or laws may also apply.

- a. Buy America – The FHWA's regulations require domestic manufacturing processes for steel and iron products that are permanently incorporated in a Federal-aid project. The regulations include a minimal use criteria and waiver provisions where appropriate (see 23 CFR §635.410).
- b. Disadvantaged Business Enterprises – federal requirement administered in Missouri by MoDOT to fulfill assurances of non-discrimination through target goals for all DOT-assisted funds (see 49 CFR Part 26 and 7 CSR 10-8.011); there are separate certifications issued by the Missouri Office of Equal Opportunity for Minority and Women-owned Disadvantaged Enterprises (M/WBE) and administered by the Missouri Office of Administration.
- c. Suspension and Debarment – refer to 49 CFR §29.
- d. Audits – refer to 23 U.S.C. §112(b)(2)(B) and 2 CFR §200 Subpart F
- e. Records Retention – refer to 2 CFR §200.333.
- f. National Environmental Policy Act of 1969.
- g. Section 106 of the National Historic Preservation Act.
- h. Section 7 of the Endangered Species Act of 1973
- i. Clean Water Act

#### **6. Definitions:**

- Federal Award means the Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in §200.101 Applicability (2 CFR §200.38). Funds are provided annually through an FHWA Apportionment Notice and distributed by the division through email to MDNR. The document used to authorize/obligate the funds is referred to as the Federal-aid Project Agreement.
- Federal Awarding Agency means the Federal agency that provides a Federal award directly to a non-Federal entity (2 CFR §200.37). The FHWA is the federal awarding agency and may also be referred to as the grantor.
- Final design means any design activities following preliminary design and expressly includes the preparation of final construction plans and detailed specifications for the performance of construction work.
- MDNR is the non-Federal entity that provides a subaward to a subrecipient. Though MoDOT is generally the pass-through entity for most federal aid programs, the Missouri Governor has designated the MDNR as having the administrative responsibility for the Recreational Trails Program. MDNR agrees to cooperate to provide financial reporting to MoDOT and FHWA for RTP funds that are set aside from MoDOT's TAP program.
- Period of performance means the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award. The MDNR must include start and end dates of the period of performance in the Federal award.



- Preliminary design defines the general project location and design concepts. It includes preliminary engineering and other activities and analyses such as environmental assessments, topographic surveys, metes and bounds surveys, geotechnical investigations, hydrologic analysis, hydraulic analysis, utility engineering, traffic studies, financial plans, revenue estimates, hazardous materials assessments, general estimates of the types and quantities of materials, and other work needed to establish parameters for the final design. Prior to completion of the NEPA review process, any such preliminary engineering and other activities and analyses must not materially affect the objective consideration of alternatives in the NEPA review process.
- Project sponsor means the subrecipient of RTP funds.
- Subaward means an award by MDNR to a subrecipient for the subrecipient to carry out part of a Federal award received by MDNR as provided in 2 CFR §200.92, and is referred to as the Financial Assistance Agreement.
- Subrecipient means the non-Federal entity that receives a subaward from MDNR to carry out the RTP. MDNR may provide subawards requiring FHWA approval to MDNR or external parties as subrecipients.

## **Section 2: Roles and Responsibilities (see Oversight Activities/Responsibilities table at the end of document)**

### **1. FHWA Roles and Responsibilities:**

FHWA is the Federal awarding agency responsible for administration of the Federal-aid Highway program, including the RTP. To ensure that RTP is in conformance with state and federal laws and regulations, the FHWA Missouri Division will fulfill its stewardship role as follows:

- Final concurrence on the determination of project eligibility.
- Final approval of NEPA documents, including:
  - National Environmental Policy Act (NEPA) of 1969
  - National Historic Preservation Act
  - Clean Water Act
  - Endangered Species Act of 1973
  - Clean Air Act Amendments of 1990
- Final approval of Right-of-Way (ROW) certification.
- Provide Buy America Waiver (**currently not being approved**).
- Approval of changes in Project Scope and Budget.
- Approval of Federal-aid Project Agreements and authorization of Federal funds for projects as outlined in the "project authorization" section below.
- Attend meetings with MDNR and/or the Trails Advisory Board.
- Coordinate with MDNR in cases of rescissions of Federal-aid highway program funds.
- Ensure that RTP projects are incorporated into the Statewide Transportation Improvement Program and relevant MPO Transportation Improvement Programs.
- Providing Training to MDNR staff.

FHWA reserves the right to be involved in RTP grant awards and RTP subawards at its discretion. Additionally, MDNR may request FHWA involvement. FHWA will provide engineering support for project development activities and technical assistance as requested.

**Opt out Provision** – On or about August 1<sup>st</sup> of each year, FHWA will send a letter to the Director of MDNR and copy the Grants Management Section to inquire if MDNR desires to opt out of the RTP. The Governor of Missouri must notify FHWA with a letter signed by the Governor or the Governor's designee accompanying the opt-out notification, to the FHWA Office of Budget's official mailbox ([BudDiv@dot.gov](mailto:BudDiv@dot.gov)) no later than the September 1<sup>st</sup> prior to the fiscal year in which the State wishes to opt out. If the State chooses to opt out, this agreement is no longer in effect.

## 2. MDNR Roles and Responsibilities:

In accordance with 23 U.S.C. §206(c)(1) and Chapter 258.060(2) RSMo., the Governor has designated MDNR as the state agency responsible for administering RTP apportionments made to Missouri. The Division of State Parks (DSP), a division of MDNR, and the Grants Management Section (GMS) a program within DSP, are responsible for oversight and administration of RTP projects to the project sponsors. The GMS is comprised of outdoor recreation and grants management professionals.

Nothing in this document shall be construed as these staff having professional expertise in design or engineering, which is the responsibility of the project sponsor. In cases where MDNR subawards funding to Division of State Parks, a subrecipient/project sponsor relationship similar to all other subawards will be maintained.

MDNR hereby advises FHWA that it wishes to assume project stewardship and oversight responsibilities in accordance with the following:

- For all RTP projects, MDNR assumes oversight responsibility for the approval of preliminary design, Plans, Specifications, and Estimates (PS&E), project inspections, and review of NEPA and ROW. MDNR understands that NEPA and ROW recommendations are subject to FHWA final approval. MDNR review and approval of all PS&E documents are for administrative compliance only. RTP projects are required to be designed, constructed, operated and maintained in accordance with State law, regulations, directives, and safety standards, and compliance with all applicable codes and laws rests with the project sponsors. Title 23 U.S.C. requirements that are applicable to all Federal-aid projects include, but are not limited to, procurement of professional services, Davis-Bacon wage rates (on projects constructed in Federal-aid highway right-of-way on highways functionally classified as arterials or collectors), advertising for bids, award of contracts, use of convict-produced materials, Buy America provisions and other requirements. All RTP projects must also comply with Federal requirements in addition to those found in Title 23 U.S.C.
- MDNR is responsible for assuring that all RTP grants subawarded to local, State, Federal, nonprofit and for-profit agencies comply with all applicable Federal and State requirements, and will monitor performance of the project sponsors to assure that they are compliant. MDNR is not relieved of this responsibility even though the project may be subawarded to the local/State/Federal agency. In accordance with 23 CFR §1.11 and §635.105, MDNR is responsible for ensuring that all project sponsors are qualified and equipped to administer the project and have processes in place to ensure compliance with Federal requirements.
- 23 U.S.C. §134 and §135 require federally funded projects to be included in the Statewide Transportation Improvement Program (STIP) and applicable Metropolitan Transportation Improvement Programs (TIPs); this includes RTP projects. RTP projects must be listed in the STIP and applicable metropolitan TIPs prior to FHWA approval of the Federal-aid Project Agreement for funding. MDNR will provide MoDOT with a list of approved projects and will include the name of the project sponsors and grant award amounts to MoDOT. FHWA and MDNR understand that upon submission, MoDOT will add these projects to the STIP and coordinate with relevant MPOs for incorporation into their TIPs. (a list of designated contacts from each of these agencies is provided at [Contact Information](#)). The State DOT and the MPOs are expected to accept the list of approved RTP projects without modifications. If the RTP projects are determined not to be regionally significant, they may be grouped and submitted as one line item to the State DOT for incorporation into the STIP, and to applicable MPOs for incorporation into their TIPs. If a RTP project is determined to be regionally significant, it must be listed individually within the STIP and any applicable TIP.
- MDNR will collect quarterly reports and reimbursement reports from the project sponsors in a timely manner as outlined in Section V. Reimbursement and Reporting Requirements of the RTP Project Administration Guide, which MDNR updates annually and provides to the project sponsors.

Several Federal legislative acts have rescinded Federal-aid highway program funds. If Congress requires a rescission, FHWA will issue Notices to the States to comply with these acts. If applicable, MoDOT is responsible for complying with these rescissions, which may affect the RTP. FHWA will coordinate rescissions of RTP funds with MDNR and MoDOT. (See <http://www.fhwa.dot.gov/legisregs/directives/notices.htm>; go to the N4510 series)



MDNR is responsible for the following:

- Development of the Federal-aid Project Agreements with FHWA for each selected project for fund obligation.
- Provide FHWA an Annual Project Summary of Eligible Projects prior to requesting project authorization for FHWA concurrence that the projects meet the Eligibility Requirements
- Approval of non-Federal shares.
- Coordination with MoDOT and MPOs to add the selected project to the STIP and TIPs.
- Providing Notice to Proceed (NTP) to begin work for the following phases: NEPA, ROW, and advertisement for construction.\* A NTP will be issued for each phase of the project activities prior to incurring costs as detailed in the “project authorization section” below.\*
- Reviewing NEPA Determination Forms and providing recommendations to FHWA for final approval.
- Approving preliminary design and PS&Es for RTP projects.
- Financial management (audits) of project sponsors (also monitoring progress).
- Preliminary approval of ROW (ensuring conformance with Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970).
- Construction monitoring and contract administration.
- Providing training and mandatory workshops to project sponsors.
- Submitting changes to the project scope and project budget for FHWA approval.
- Conducting the initial inspection of proposed project sites and final construction inspection of completed projects.
- Providing project acceptance and project closeout.
- Ensuring all projects are administered in accordance with all applicable Federal laws and regulations.
- Provide FHWA a quarterly report of Inactive projects.
- Maintaining complete project files per records management requirements outlined in 2 CFR §200.333 and further clarified in the Project Funds Management Guide for State Grants.

\*See the Guide, **Section 1. Project Administration Overview**, Notice to Proceed (NTP) letters for details. In addition, it is important to note that project construction cannot begin until after NEPA approval, ROW clearance and certification, and railroad and utilities certifications.

### **Section 3: Stewardship Roles and Responsibilities for Specific Program Areas and Activities**

#### **1. State Advisory Board:**

In accordance with 23 U.S.C. §206(c)(2), MDNR has established a State Recreational Trails Advisory Board ([Missouri Trails Advisory Board](#)) that represents both motorized and non-motorized recreational trail users, and agrees to certify each year that the Advisory Board shall meet not less than once per fiscal year. MDNR will invite the FHWA program manager to attend the meetings as an Ex-Officio member, and will supply meeting information through handouts, mail, or electronically. The major functions provided by this Advisory Board include setting goals and priorities for projects, review and scoring all project applications, and making funding recommendations to the MDNR. MDNR Trail Advisory Board meetings are open to the public.

#### **2. Project Eligibility:**

See SECTION I. C) What projects are eligible for RTP funding? of MDNRs [RTP Grant Application Guide](#) and the [RTP guidance](#) provided on the FHWA website.

#### **3. State Recreational Plan:**

23 U.S.C. §206(d)(1)(B) mandates that funds apportioned to a State to carry out the RTP be obligated for recreational trails and related projects that are identified in a Statewide Comprehensive Outdoor Recreation Plan (SCORP). Missouri's SCORP may be found online at [Missouri Statewide Comprehensive Outdoor Recreation Plan](#).

#### **4. Project Applications:**

MDNR maintains the most current grant application for the RTP on the MDNR web site at [RTP Trail Application](#). To assist with the grant application process, Missouri State parks staff hosts grant workshops to explain each question on the applications and describe the requirements of the RTP application processes.

The [RTP Grant Application Guide](#) provides instructions for eligible project sponsors. Grants will be awarded in the fall of each year. Applicants of projects that are recommended for funding will be required to attend a mandatory grant administration workshop/webinar, where they will receive a copy of the Grant Administration Guide for their RTP grants.

#### **5. Financial Assistance Agreement (agreement between MDNR and project sponsors):**

After the selection of potential project sponsors, GMS will complete an on-site inspection to ensure the site fits the project proposals. GMS assigns a project number to be used throughout the life of the project, and forwards the selected projects to FHWA for review and concurrence with the project eligibility determination. If FHWA agrees the project is eligible, FHWA will provide GMS with written concurrence.

GMS prepares a Financial Assistance Agreement to be signed by MDNR and the project sponsor. After GMS receives the signed Financial Assistance Agreement from the project sponsor, GMS prepares and submits the initial Federal-aid Project Agreement to FHWA recommending approval for obligation and authorization of funds for the desired phase of work (see Section 9. Project Authorization below for more detail), and will submit for approval a modified Federal-aid Project Agreement for each subsequent project phase. The period of performance requires an end date to be included in the Federal-aid Project Agreement after which no additional costs may be incurred and are not eligible for reimbursement.

The period of performance must be based on the States' estimated project schedule, including required processes to ensure all Federal requirements have been satisfied. Divisions must ensure the estimated period of performance is in line with the States' established policies, procedures, and project schedules. The agreement end date may be modified as necessary, based on documented revisions to project schedules or other circumstances.

GMS will send a notice of award letter to the project sponsor, with information about mandatory attendance at the project administration workshop. The RTP Project Administration Guide and other essential information is provided to the project sponsors at the workshop. Certification of attendance is required before GMS will process any reimbursement requests. If a project sponsor is unable to attend the project administration workshop, they must meet with GMS before any reimbursement requests will be allowed. FHWA will attend the RTP workshop as a resource for federal-aid requirements and regulations.

The RTP Project Administration Guide outlines the Federal and State laws, and regulations that the RTP project sponsors must follow. Failure to meet all the requirements may result in cancellation of the Financial Assistance Agreement by MDNR and the return of all funds previously reimbursed to the FHWA by the project sponsor.

In Missouri, a 25-year stewardship commitment is required for all RTP projects, and recordation of this covenant is a closeout requirement. This commitment states that all project sites and trails must be maintained and open to the public for 25 years. MDNR will perform periodic onsite inspections to ensure this commitment is followed. If MDNR discovers a project sponsor is in violation of this commitment, MDNR and FHWA will consult about the appropriate course of action. All RTP projects must comply with the Uniform Relocation Assistance Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended.

#### **6. Matching Funds Requirements:**

The Federal/Matching share provisions that apply to RTP apportioned funds are provided by [FHWA's RTP Guidance](#) as well as MDNR's [RTP Grant Application Guide](#), [RTP Project Administration Guide](#) and [Federal-aid Guidance Non-Federal Matching Requirements](#).



## **7. Environmental Process:**

Documentation of compliance with the National Environmental Policy Act (NEPA) and other Federal environmental laws, regulations, and Executive Orders must be provided as part of an authorized project (see Section 9. Project Authorization below for more detail) under the RTP. FHWA procedures in 23 CFR 771 apply to the RTP. Most RTP projects will qualify as Categorical Exclusions (CE) under NEPA (23 CFR 771.117). However, each project must be reviewed to assure that it does not have a significant impact on the environment.

MDNR shall ensure the project sponsors obtain all environmental clearances and permits required for all RTP projects. MDNR recommends that project sponsors use MDNR's e-permitting webpage to determine which permits to obtain, which is located at <http://dnr.mo.gov/env/wpp/epermit/help.htm>. Permits are not often required; however, when required, the project cannot proceed until all necessary permits have been obtained.

MDNR will review the NEPA Determination Forms and provide recommendations to FHWA for final approval. FHWA may approve the submitted CE, request more information, or indicate that an EA or EIS needs to be prepared.

Public involvement is required in the State and metropolitan transportation planning processes, including approval of STIPs and TIPs. Public involvement also is required in the development of Statewide Comprehensive Outdoor Recreation Plans (SCORPs).

Section II. NEPA Review and Determination, found in the [MDNR RTP Project Administration Guide](#), describes the steps for completing the NEPA process and MDNR's public involvement requirements

## **8. Project Authorization:**

All RTP projects will require Federal Authorization for each phase requesting federal participation. MDNR will develop a Financial Assistance Agreement with the project sponsor and a Federal-aid Project Agreement with FHWA for each project. The Federal-aid Project Agreement itself will be authorized by signature between FHWA and MDNR and will indicate the phase of work to be authorized.

GMS staff will notify FHWA when project sponsors complete each phase of the project and request authorization for the next phase by sending a modified Federal-aid Project Agreement to FHWA, that is signed and dated by MDNR as well as providing any additional documentation required for that phase of work. Project expenses incurred prior to FHWA authorization will not be eligible for reimbursement unless FHWA has authorized that phase of work. All project activities must progress by project phase and only as authorized. Each phase must be completed before obtaining authorization for the next phase. A period of performance end date needs to be included in the Federal-aid Project Agreement for each phase of the project, and must be based on the estimated project schedule, including required processes to ensure all Federal requirements have been satisfied. The project end date may be modified as necessary, based on documented revisions to project schedules or other circumstances. Project sponsors should anticipate project costs, funding sources, and reimbursement schedule when budgeting for project expenses. MDNR will notify the project sponsors with a NTP letter when they have received Federal authorization for each phase. Below is an overview of the three different authorization phases of a project:

- 1) Design Phase: Project sponsors are required to submit all design plans including the Plan, Specification, and Estimate (PS&E's) package to MDNR for approval. If significant design changes are made, the project sponsor will be required to submit a request for "project scope change" to MDNR for approval. This may also require reevaluation of the NEPA review.
  - a) Preliminary Design defines the general project location and design concepts. It identifies the project elements in relation to property boundaries and existing features. This includes but is not limited to eligible pre-award planning costs, environmental surveys and NEPA approval. FHWA's approval of the NEPA NTP is considered approval and conclusion of the preliminary design phase, however if the project sponsor is not requesting to federalize the NEPA review which is part of the preliminary engineering (PE) phase, and is not planning to use the design costs as a match toward the federal share, then federal authorization is not required.



- b) Final Design includes the preparation of final construction plans and specifications for the performance of construction work. All necessary permits should be secured during the Final Design Phase. Projects that do not include acquisition of real property may receive Right-of-way approval in Final Design Phase. MDNR's approval of the project's procurement documents signifies the conclusion of the final design phase. Final design shall not proceed until NEPA approval is provided.

The RTP Project Administration Guide provides links to design standards and specification for the specific type of trail development or maintenance project that is being undertaken by the project sponsor. FHWA has also provided links to design standards, accessibility requirements and other pertinent resources at [Accessibility Guidebook for Outdoor Recreation and Trails](#) and [Guidelines and Standards](#).

- 2) Right-of-Way Phase: All project sponsors must comply with the provisions of the [Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970](#), as amended. Section III of the [RTP Project Administration Guide](#) outlines the steps required for project sponsors to show compliance with the Uniform Act. It is the project sponsor's responsibility to provide proof of right-of-way during their application. For projects that include the acquisition of additional right-of-way as part of the project, project sponsors will be required to comply with the Real Property Acquisition requirements in the RTP Project Administration Guide. The following approved documents shall be available at the time Right-of-Way authorization is requested from FHWA; approved NEPA and STIP/TIP.

Acquisition costs include the costs for acquiring property by fee title, or the use of property by permanent or temporary easement. Incidental costs include appraisal fees, title searches, preparation of preliminary surveys, plats, and property descriptions. FHWA's approval of the right-of-way signifies the conclusion of the right-of-way phase.

- 3) Construction Phase: Allows the project to proceed to construction. Project sponsors must use their own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations. Adequate supervision and inspection must be provided by the project sponsor to ensure projects are completed in conformance with design standards, construction contract documents, plans and specifications. The final inspection and closeout documents signify the conclusion of the construction phase and the completion of the project. The following approved documents shall be available at the time construction authorization is requested from FHWA; approved PS&E, approved NEPA, Right of Way Certification, Utility Certification, Railroad Certification and STIP/TIP Information.

General criteria for FHWA authorization of projects:

- a. All Federal requirements have been met for the applicable phase being requested.
- b. The State Advisory Board has met at least once within the Federal fiscal year.
- c. FHWA concurs with the project eligibility.
- d. MDNR has submitted the list of projects to MoDOT for incorporation in the STIP and/or applicable TIPs.
- e. MDNR's projects satisfy either the 40-30-30 requirements or MDNR has set aside, for future obligation, the amount of funds necessary to meet the 40-30-30 requirements.
- f. If administrative funds are to be used, then MDNR's administrative costs must be related to the administration of the RTP and the funds must be obligated under the correct FMIS program code.
- g. If educational funding is to be used, then the funds must be obligated under the correct FMIS program code.
- h. Financial Assistance Agreement between MDNR and the project sponsor has been executed.

## 9. Procurement:

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The MDNR will comply with 2 CFR §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by 2 CFR §200.326 Contract provisions. All other non-Federal entities, including subrecipients of RTP funds, will follow 2 CFR §200.318 General procurement standards through 2 CFR §200.326 Contract provisions.

Section IV. Project Development, [RTP Project Administration Guide](#), outlines the procurement procedures.



## **10. Trail Accessibility:**

All projects must comply with the Americans with Disabilities Act (ADA), which requires constructing facilities in accordance with ADA guidelines to the extent feasible, or provide documentation to explain or justify why ADA compliance is not feasible or reasonable. Some trails, particularly backcountry trails and mountain bike trails, are not possible to construct to ADA standards.

MDNR includes an [accessibility checklist](#) in the RTP Project Administration Guide, along with other pertinent guides and standards for project development. FHWA recognizes the need for the transportation system to be accessible to all users, and has issued a memorandum entitled "Clarification of FHWA's Oversight Role in Accessibility", located at [https://www.fhwa.dot.gov/civilrights/memos/ada\\_memo\\_clarification1.cfm](https://www.fhwa.dot.gov/civilrights/memos/ada_memo_clarification1.cfm).

MDNR recommends that project sponsors consult with design professionals for assistance when designing trails and trail amenities to ensure accessibility and compliance. At the project closeout, MDNR will require the project sponsor to complete an ADA checklist and an as-built plan to ensure compliance with accessibility requirements under the ADA.

## **11. Construction Monitoring and Inspection:**

Project inspections are performed by MDNR. All selected projects will be inspected. Types and frequency of inspections are as follows:

- A pre-award on-site inspection during the project review and selection process.
- During the construction phase, MDNR may conduct one or more progress inspections. These are performed on an as-needed basis.
- At project completion, MDNR will perform a final inspection of the project site, using the as-built plans and the ADA check list (when applicable) provided by the project sponsor at the project close-out. If a vehicle or motorized construction or maintenance equipment was purchased by the project sponsor, MDNR will inspect the equipment during the final inspection.
- MDNR will invite the FHWA program manager to attend on an as-needed basis.

## **12. Financial Requirements:**

Under 23 U.S.C. §118(b), the "period of availability" for obligation of apportioned funds is four fiscal years; the current year, plus three years. The funds are treated in a "first in, first out" manner. Older year funds are considered for obligation before newer year funds. The unobligated balance of funds will lapse if the unobligated balance exceeds the sum of the apportionments issued for the current fiscal year and the three prior fiscal years.

MDNR may use up to seven percent of its RTP apportionments for administrative costs, and up to five percent for educational programs within a fiscal year. Administrative costs include costs to administer the program, including staff time, meetings of the advisory board, attendance at meetings or conferences, newsletters and websites, supplies and equipment, travel, and statewide trail planning. Educational costs include educational programs that promote safety and environmental protection as they relate to the use of recreational trails. This includes development and operation of trail safety and environmental education programs, and the production of trail-related educational materials. Administrative and educational funds that are not expended within a fiscal year cannot be carried over; unexpended funds must be de-obligated, and the funds must be used for the construction of trail projects.

MDNR agrees to provide FHWA with a funding report to actively monitor project status and the expected activities for the up-coming year prior to incurring costs near the beginning of each grant cycle as well as the current balance of motorized and nonmotorized funds available for obligation.

MDNR submits a Federal-Aid Project Agreement form for each project to FHWA for authorization of funds for each phase of work. The fully-executed Financial Assistance Agreement with the subrecipient shall be used to support the submittal for the Federal-aid Project Agreement requests. Financial transactions are processed directly through the FHWA Finance Team. At MDNR, the GMS will track the funds available for motorized and non-motorized use and for each project agreement with the concurrence of FHWA.



Per 23 CFR 603.106(a)(5), it is MDNR's responsibility to review inactive projects (defined as, no expenditures for 12 months or more) on a quarterly basis to ensure the obligation is valid. FHWA uses a proactive approach to inactive project monitoring by providing a quarterly list to MDNR for projects within 6 months of becoming inactive. This is to achieve FHWA's agency goal of a 2% inactive rate. MDNR provides FHWA with inactive project justifications for assessment. The FHWA will review the inactive justifications to ensure that projects using RTP funds are valid (defined as, aligning with MDNR's documented current project cost estimate and the project's performance goals – scope and schedule – are being achieved per 2 CFR §200.328). If obligations are not valid, the FHWA Division office will work with MDNR to adjust funds accordingly and as needed.

MDNR holds the project sponsors responsible for accounting of the project per their Financial Assistance Agreement, in accordance with the current year's RTP Project Administration Guide and 2 CFR §200.331. MDNR's Division of Administrative Services' Internal Audit Program conducts in-house audits when needed. Any findings related to the RTP will be provided to FHWA.

### 13. Records:

Each RTP project has a file folder located in the MDNR office that contains the applications, inspection reports, NEPA documentation, billing, reimbursement information, maps, etc., and correspondence associated with the grant. Project information may also be kept on the RTP Grants Database. When the grant is closed, the grant agreements and real estate interests (easements) are saved on a file for 25 years. Invoices and other documents not pertinent to the 25-year stewardship obligations are disposed of five years after project closeout. These project files are subject to FHWA inspection at any time. All project sponsors are responsible for maintaining their financial and environmental records for a minimum of five years from the date of submission of the final payment request by the project sponsor.

## Oversight Activities/Responsibilities

The following activities require coordination between MDNR and FHWA to enlist FHWA involvement and to attain reviews and approvals within the time frames that are agreed upon. In this agreement, all references to days mean business days. MDNR and FHWA agree to work as true partners to ensure success of the RTP.

Activities		MDNR/FHWA Responsibilities	
Approval/Action	Description of Actions and Responsibilities	Expected Timeframe MDNR	Expected Timeframe FHWA
MDNR Project Administration Guide	MDNR shall submit to FHWA annually for review and approval for any proposed/needed changes	Submit to FHWA at least 60 days prior to publishing to the project sponsors	Review and provide comments/approval within 30 days of receipt
	Any subsequent reviews and approvals	Provide 10 days for FHWA to respond	Review/approve within 10 days of receipt
Opt out Provision	FHWA sends a notice to MDNR  MDNR shall notify FHWA if the Governor intends to opt out of the RTP	Provide opt out response by September 1 <sup>st</sup>	Provide opt out notification by August 1 <sup>st</sup>
Application for the selected projects	MDNR shall submit to FHWA for review and concurrence on eligibility of funds for projects	Submit to FHWA at least 30 days prior to needing approval or upon finalizing the list of selected projects.	Review/approve within 10 days of receipt
	Any subsequent reviews and approvals	Provide 10 days for FHWA to respond	

Add projects to the STIP and TIPs	MDNR shall coordinate with MoDOT and MPOs to add the selected projects to the STIP and TIPs, and will provide verification to FHWA.	Submit selected projects to MoDOT after FHWA Approval	No action required
MDNR and Project Sponsor Financial Assistance Agreement	MDNR shall provide the project sponsors a subaward which is to be executed by the MDNR	Must be completed before funds can be authorized by FHWA	No action required
Authorization/obligation of funds	MDNR shall submit a Federal-aid Project Agreement or a modified Federal-aid Project Agreement for authorization of Federal funds to FHWA for each phase of the project.	Submit request to FHWA	Review and approve request or return for revisions within 10 days of receipt
Reimbursement requests	MDNR shall submit reimbursement requests to FHWA on a semi-annual basis (at a minimum) for each project.	Submit request to FHWA	Review and approve request or return for revisions within 10 days of receipt
Inactive Project Monitoring	MDNR will actively monitor RTP projects to ensure obligations are proper. FHWA will provide an inactive projects list to MDNR quarterly (by the 15 <sup>th</sup> of the month following quarter end) MDNR will reply with project justifications to FHWA quarterly and FHWA will review project justifications to determine whether obligations are proper and what action should be taken.	Submit justifications/response to FHWA 45 days prior to the end of the quarter.  MDNR should take appropriate action to resolve inactivity within 30 days of quarter end.	Review and determine whether obligations are proper and communicate the desired action to be taken by MDNR. FHWA will review and provide comments by the end of the second month each quarter.
Meetings, conferences, training, etc. (Ex. Advisory Board Meeting)	MDNR requests FHWA to attend meetings, conferences, trainings, etc.  FHWA request MDNR to attend quarterly meetings	Provide an invite (minimum of 5 days) with any materials for FHWA review prior to issuing or publishing	Schedule quarterly meetings for every 3 months (January, April, July, and October)
Training and Workshop	MDNR request FHWA to provide or present training and workshops	Provide request 30 days prior to training or workshop and provide any materials for FHWA review prior to issuing or publishing	Provide or present training and workshops when needed



Spot reviews, program reviews and project inspections	FHWA and MDNR shall perform spot reviews, program reviews and project inspections	Pre-award site inspection of selected project  As-needed basis during construction of project  Final construction inspection of completed project	As-needed basis or requested by MDNR
NEPA, ROW, etc.	MDNR shall review documents and recommend to FHWA for final approval.	Submit to FHWA 10 days prior to needing approval	Review and provide comments/approval within 10 days
Utilities/railroad	Project sponsor submits letter to MDNR certifying that Utilities or Railroad is cleared or not impacted	File in project folder	No action required
Program or Project Inquiries	FHWA and MDNR will submit inquiries for the RTP program by email, telephone or face-to-face.	Provide inquiry to FHWA program coordinator for response.	Will coordinate with FHWA staff to address MDNR inquiries and provide response within 10 days.
Program Guidance	FHWA will notify MDNR when new program guidance is available that may impact the operations of the program.	MDNR will confirm receipt and if mandatory, describe how they will be incorporated, as appropriate.	FHWA will send guidance within 10 days along with instructions on if it is mandatory to incorporate the changes or optional.

#### Ground Rules:

The parties agree to concentrate efforts in improving our work by following these ground rules:

- The parties will respect each other by valuing individual opinions and maintaining an open mind to suggestions.
- The parties will communicate directly with each other by telephone, mail, e-mail and more importantly in face-to-face conversations. After face-to-face conversation(s), all formal requests and/or actions discussed will be followed-up in writing.
- The parties will respond to e-mails and telephone calls within three days unless out of the office during that time.
- The parties will make decisions following a thorough discussion of the issue using appropriate communication methods. Decisions should be reached within a two-week period following discussions. All decisions will be communicated in writing.
- The parties will actively participate in scheduled meetings, add value to the discussion and refrain from personal agendas. Non-regularly scheduled meeting dates should be determined after all primary principle schedules have been considered.
- All submittals will be responded to in writing. The response should be specific and detailed.
- The parties recognize that there will be circumstances where a "waiver" from the completeness or timeliness criteria will be proposed. Waivers shall be well documented and agreed upon by both parties.

**Primary Points of Contact:**

The primary point of contact (program coordinator) for questions related to the RTP Program as follows:

**FHWA:**

Brian Nevins  
Transportation Engineer, FHWA  
3220 W. Edgewood, Suite H  
Jefferson City, MO 65109  
(573) 619-3033  
[Brian.Nevins@dot.gov](mailto:Brian.Nevins@dot.gov)

**MDNR:**

Rebecca Rost  
Section Chief, GMS  
1659 E. Elm Street  
Jefferson City, MO 65101  
(573) 751-0848  
[rebecca.rost@dnr.mo.gov](mailto:rebecca.rost@dnr.mo.gov)

Contact(s) for MoDOT and MPOs who FHWA expects MDNR to provide project STIP/TIP information to can be found at [Contact Information](#)

**Conflict Resolution:**

In case of conflict, the parties agree to resolve conflicts at the lowest possible level by agreement. If the parties cannot reach an agreement, the parties agree to elevate the issue in the following manner:

- First, MDNR, Division of State Parks' GMS Chief and FHWA's Division RTP Program Coordinator will meet to discuss and attempt to resolve conflicts that could not be resolved by their staffs.
- Issues unresolved at the first level will be elevated to FHWA's Team Leader and MDNR, Division of State Parks' Grants, Recreation, and Interpretation Program Director.
- Issues unresolved at the second level will be elevated to FHWA's Assistant Division Administrator and MDNR's Division of State Parks Deputy Division Director of Resources.
- Finally, any issues unresolved at the first, second, or third levels will be elevated to FHWA's Division Administrator and MDNR's Division of State Parks Director.

**Implementation of the Agreement:**

FHWA and MDNR enter into this Agreement to conduct program stewardship and oversight activities for the RTP in accordance with the above-stipulated agreement elements and parameters.

MDNR and FHWA will review this Agreement annually or upon enactment of a new transportation authorization act, to determine if any changes need to be made. The Division Administrator of FHWA and Division Director of MDNR Division of State Parks (or the Director's appointees) may initiate amendments to and/or changes to this Agreement should essential modifications become apparent to either party. Any such changes however shall be in writing and agreed to by both parties prior to taking effect.

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Kevin W. Ward  
Division Administrator  
FHWA Missouri Division

  
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Mike Sutherland  
Director  
Missouri Department of Natural  
Resources, Division of State Parks

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Date:

6-30-2020  
Date: