



City of Billings

PROFESSIONAL SERVICES AGREEMENT
General Transit Planning and Development Advisory Services
City of Billings
And
LSC Transportation Consultants, Inc.

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as "**CITY**," and **LSC Transportation Consultants, Inc.**, hereinafter referred to as "**CONSULTANT**."

WITNESSETH:

WHEREAS, the **CITY** proposes to engage the **CONSULTANT** to provide general Transit Planning and Development Services and desires to hire **CONSULTANT** as an independent contractor to perform the services as described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof.

WHEREAS, the **CITY** has authority to contract for such services, and;

WHEREAS, the **CONSULTANT** represents that he/she is fully qualified to perform such services personally and is in compliance with the Montana Statutes relating to the provisions of such services.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **PURPOSE:** **CITY** agrees to hire **CONSULTANT** as an independent contractor to perform the services as described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof. In performing these services, the **CONSULTANT** shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

2. **TERM:** This **AGREEMENT** shall be for a period of five (5) years, from the execution of this **AGREEMENT**.

3. **PAYMENT:** In consideration of the services provided by the **CONSULTANT** under this **AGREEMENT**, the **CITY** agrees to pay **CONSULTANT** the standard industry rates to be negotiated on project by project bases.

In the event scope of work issues arise, the **CONSULTANT** shall immediately discuss them with the Project Manager for the **CITY**. It is understood that the Consultant will not perform any work that the **CITY** deems outside the scope prior to receiving written approval from the **CITY**, and at a rate agreed upon by both parties. Any payment for work not agreed upon by the **CITY** shall be denied.

4. **INDEPENDENT CONTRACTOR STATUS:** The parties agree that **CONSULTANT** is an independent Contractor for purposes of this **AGREEMENT** and is not to be considered an employee of the **CITY** for any purpose. **CONSULTANT** is not subject to the terms and provisions of the **CITY's** personnel policies handbook and may not be considered a **CITY** employee for workers' compensation or any other purpose. **CONSULTANT** is not authorized to represent the **CITY** or otherwise bind the **CITY** in any dealings between **CONSULTANT** and any third parties.

210 North 27th Street P.O. Box 1178, Billings, MT 59101



City of Billings

5. INDEMNITY AND INSURANCE:

- A. The Consultant agrees to indemnify, defend and save City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Consultant or its agents or employees.
- B. The Consultant shall not indemnify, defend, save and hold Billings harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Billings occurring during the course of or as a result of the performance of the **AGREEMENT**.
- C. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Consultant, the Consultant shall indemnify, defend, save, and hold Billings harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, which result from the Consultant's or any subcontractor's wrongful or negligent acts occurring as a result from the Consultant's performance pursuant to this **AGREEMENT**.
- D. The **CONSULTANT** shall maintain in good standing the insurance described in this Section. Before rendering any services under this **AGREEMENT**, the **CONSULTANT** shall furnish the **CITY** with proof of insurance in accordance with this Section.

The **CONSULTANT** shall provide the following insurance:

- 1. Workers' compensation and employer's liability coverage as required by Montana law.
- 2. Commercial general liability, including contractual and personal injury coverage's -- \$750,000 per claim and \$1,500,000 per occurrence.
- 3. Commercial automobile liability -- \$1,500,000 per accident.
- 4. Professional liability in the amount of \$1,500,000 per claim.

Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to the **CITY** prior to cancellation.

The **CITY** shall be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies.

CONSULTANT shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. **CONSULTANT** shall maintain workers' compensation insurance coverage for all members and employees of **CONSULTANT's** business, except for those members who are exempted as independent **CONSULTANTS** under the provisions of §39-71-401, MCA.

CONSULTANT shall furnish **CITY** with copies showing one of the following: **(1)** proof of registration as a registered Contractor under Title 39, Chapter 9, MCA; **(2)** a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or **(3)** proof of exemption from workers' compensation granted by law for independent Contractors.



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6. AGREEMENTS OF CONSULTANT: As an inducement to the execution of this **AGREEMENT** by the **CITY** and in consideration of the agreements to be performed by the **CITY**, the **CONSULTANT** agrees that:

A. Qualifications

The **CONSULTANT** is qualified to perform the services to be furnished under this **AGREEMENT** and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform.

B. Solicitation of Agreement

The **CONSULTANT** has not employed any person to solicit this **AGREEMENT** and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this **AGREEMENT**.

C. Facilities and Personnel

The **CONSULTANT** has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.

D. Subcontracting

None of the work or services covered by this **AGREEMENT** shall be subcontracted without the prior approval of the **CITY**.

E. Affidavits of Compliance

The **CONSULTANT** will, if requested by the **CITY**, furnish the **CITY** affidavits certifying compliance with the provisions of this Section.

7. AGREEMENTS OF CITY:

A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the City of Billings' portion of the project as designated in the scope of work.

B. Name a Project Manager who shall be the liaison between the Consultant and the City of Billings. For this project, the Project Manager for **CONSULTANT** designated is **Albert T. Stoddard III**, and the Project Manager for **CITY** designated is **Debra Hagel**.

8. NONDISCRIMINATION:

A. The **CONSULTANT** will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The **CONSULTANT** will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or



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termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The **CONSULTANT** agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

- B. The **CONSULTANT** shall state, in all solicitations or advertisements for employees to work on jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
 - C. The **CONSULTANT** shall comply with any and all reporting requirements that may apply to it that the **CITY** may establish by regulation.
 - D. The **CONSULTANT** shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this **AGREEMENT**, so as to be binding upon every such sub-consultant or vendor of the **CONSULTANT** under this **AGREEMENT**.
 - E. The **CONSULTANT** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
9. **PERMITS, LAWS, AND TAXES:** The **CONSULTANT** shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this **AGREEMENT**. All actions taken by the **CONSULTANT** under this **AGREEMENT** shall comply with all applicable statutes, ordinances, rules and regulations. The **CONSULTANT** shall pay all taxes pertaining to its performance under this **AGREEMENT**.
10. **NONWAIVER:** The failure of either party at any time to enforce a provision of this **AGREEMENT** shall in no way constitute a waiver of the provision, nor in any way affect the validity of this **AGREEMENT** or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.
11. **DECLARATION OF NO FINANCIAL INTEREST:** The **CONSULTANT** hereby declares that he does not have any interest (including that of real estate agent or broker), direct or indirect, present or prospective, in any property described in Section 1 or in its sale, or any other interest, whether or not in connection with the property, which would conflict in any manner or degree with the performance of the services and the submission of impartial reports, and has not employed and will not employ, in connection with the services to be furnished under this **AGREEMENT**, any person having any such interest. Until the property is acquired by the **CITY** or excluded from its project by resolution of its governing body, the **CONSULTANT** and any employees of the **CONSULTANT**, so long as they are employed by the **CONSULTANT**, will not acquire any such interests and will not, for their own account or for other than the **CITY**, negotiate for any of the property, perform services in connection with the property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to the property.
12. **SUCCESSORS AND ASSIGNS:** This **AGREEMENT** and all of the covenants hereof shall inure to the benefit of and be binding upon the **CITY** and the **CONSULTANT** respectively and his partners, successors, assigns, and legal representatives. Neither the **CITY** nor the **CONSULTANT** shall have the right to assign, transfer, or sublet his interest or obligations hereunder without written consent of the other party.



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13. **CHANGES IN WORK:** Any change in the scope of **CONSULTANT'S** services as stated in this **AGREEMENT** for whatever reason, will be negotiated between the **CITY** and the **CONSULTANT** and an amendment to this **AGREEMENT** will be issued with the appropriate change of services and **AGREEMENT** fee noted.
14. **LEGAL RELATIONS:** The **CONSULTANT** shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done.
15. **TERMINATION OF AGREEMENT:** The right is reserved by the **CITY** to terminate this **AGREEMENT** at any time upon not less than thirty (30) days written notice to the **CONSULTANT**.

In the event the **CITY** terminates this **AGREEMENT**, the **CONSULTANT** shall be paid for the amount of work performed or services rendered to date of termination per the **AGREEMENT** fee.
16. **ENDORSEMENTS:** The **CONSULTANT** shall furnish signatures, statements, or other suitable means to signify responsible endorsement of work on all reports furnished by him.
17. **OWNERSHIP OF DOCUMENTS:** All information relating to the project and prepared under the terms of this **AGREEMENT**, including reports, data, recommendations, exhibits, analyses, and plans shall be deemed the property of the **CITY**. Reproduces of all notes, reports, and plans shall be made available at the **CITY'S** request.
18. **PUBLIC INFORMATION:** The **CONSULTANT** shall not issue any statements, releases, or information for public dissemination without prior written approval of the **CITY**.
19. **PROPRIETARY RIGHTS:** If patentable discoveries or inventions should result from work required herein, all rights accruing from such discoveries or inventions shall be the property of the **CITY**.
20. **RECORDS:** The **CONSULTANT** shall maintain accounting records and other evidence pertaining to the cost incurred and to make the records available at all times during the **AGREEMENT** term and for three (3) years from the date of final payment. Such accounting records and other evidence pertaining to the cost incurred will be made available for inspections authorized by the **CITY** and copies thereof shall be furnished if requested.
21. **ATTORNEY'S FEES AND COSTS:** That in the event it becomes necessary for either Party to this **AGREEMENT** to retain an attorney to enforce any of the terms or conditions of the **AGREEMENT** or to give any notice required herein, then the prevailing Party or the Party giving notice shall be entitled to reasonable attorney's fees and costs.
22. **LITIGATION LOCATION:** The parties agree that this **AGREEMENT** shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the **AGREEMENT** or the performance of its terms.
23. **MODIFICATION AND AMENDMENTS:** That any amendment or modification of this **AGREEMENT** or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this **AGREEMENT**.



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24. **Required Federal Provisions and Clauses:** The **CONSULTANT** shall abide by all Federal Provisions and Clauses as described and attached hereto as Exhibit "B".

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

ATTEST:

CITY OF BILLINGS

By: _____
CITY CLERK

BY: _____
MAYOR

APPROVED AS TO FORM:

BY: _____
CITY ATTORNEY

BY: _____
CONSULTANT



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“Exhibit A” Scope of Work

- 1) Transportation Data Collection and Analysis
 - Origin/Destination Studies
 - Travel Time/patterns Studies
 - Trend analysis
 - GIS Applications
 - Computer Applications
 - Data Collection Management
 - Computer Systems Analysis
 - Computer Programming
 - Computer Program Documentation
 - Transit Operations Data
 - Special Studies
- 2) Transit Planning
 - Operations Planning
 - Strategic Planning
 - Passenger Assistance Techniques
 - Risk Management and Safety
 - Maintenance Management, Capital Replacement Strategies
 - Analysis and/or Development of funding options, financial projections and prioritization of projects
 - Development of planning standards, benchmarks or thresholds
 - Personnel Management
 - Driver Training if Applicable
 - Systems Planning
 - Intermodal Planning
 - Paratransit Planning
 - Management Systems
 - Feasibility Studies
 - Special Studies
- 3) Financial and Economic
 - Economic Analysis
 - Cost Allocation Modeling
 - Fare Revenue and Allocation Modeling
 - Fare Policy Analysis
 - Financial Planning
 - Service Reduction Recommendations based on budgetary constraints



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“Exhibit B” Required Federal Provisions and Clauses

FTA ASSISTED REQUIRED CLAUSES FOR PROFESSIONAL SERVICES PROCUREMENTS

It is a requirement of the Federal Government that activities financed, in part, with Federal funds and performed by a third party contractor and its subcontractors on behalf of a Federal grantee must be carried out in accordance with Federal requirements.

Activities performed resulting from the original contract to this and any other prior or subsequent contract amendments thereto are financed, in part, by a grant from the United States Department of Transportation (DOT), Federal Transit Administration (FTA), and are therefore subject to the applicable grant terms, conditions, and regulations. Accordingly, any contractor and its subcontractors performing activities under this contract must adhere to the Federal regulations stated herein as a condition of satisfactory performance. All subcontracts and subcontractors employed as a result of this contract are subject to the same conditions and regulations as set forth herein unless specifically exempted. The prime contractor shall ensure that its subcontractors at all tiers are made aware of and comply with these Federal regulations. The prime contractor will be held liable for compliance failures by its subcontractors. Failure to comply will render the prime contractor responsible for damages and/or contract termination.

Incorporation of FTA Terms

General Contract Provisions includes, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Billings, Aviation/Transit Department – MET

Transit Division (hereinafter referred to as the MET) requests that would cause MET to be in Violation of the FTA terms and conditions.

Fly America

The Recipient understands and agrees that the Federal Government will not participate in the costs on international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S. flag air carriers to the extent service by U.S. flag air carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, and U.S. General Services Administration (U.S. GSA) regulations “Use of United States Flag Air Carriers”, 41 CFR. 301.131 through 301.143.

Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Records Retention/Audit and Inspection of Records

(A) The Contractor shall permit the authorized representatives of MET, the U.S. Department of Transportation and the Comptroller General of the United States or any or their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions of



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the Contractor relating to its performance under the contract until the expiration of three years after final payment under this contract.

(B) The Contractor further agrees to include in all subcontracts hereunder a provision to the effect that the subcontractor agrees that MET, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any books, documents, papers, and records of the subcontractor directly pertinent to this contract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(C) The periods of access and examination described above, for records which relate to (1) appeals under the dispute clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract to which an exception has been taken by the U.S. Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

Federal Changes

Contractor shall at all time comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Recycled Products

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S. C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

No Federal Government Obligations to Third Parties

The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to the contract) pertaining to any matter resulting from the underlying contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements and Related Acts

The Recipient acknowledges and agrees as follows:

(A) The Recipient acknowledges that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* And U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the Project. Accordingly, by signing the Grant Agreement or Cooperative Agreement, the Recipient certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the covered by the Grant Agreement or Cooperative Agreement. In addition to other penalties that may be applicable, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification,



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the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Recipient to the extent the Federal Government deems appropriate.

(B) The Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Recipient the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

Termination

The Recipient acknowledges and agrees as follows:

(A) Termination for Convenience: MET may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in MET's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to MET to be paid the Contractor. If the Contractor has any property in its possession belonging to MET, the Contractor or will account for the same, and dispose of it in the manner MET directs.

(B) Termination for Default (Breach or Cause): If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, MET may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by MET that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, MET, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience

(C) Opportunity to Cure: MET In its sole discretion may, in the case of a termination for breach or default, allow the Contractor (an appropriately short period of time) in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to MET's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from MET setting forth the nature of said breach or default, MET shall have the right to terminate the Contract without further obligations to Contractor. Any such termination for default shall not in any way operate to preclude MET from also pursuing all available remedies against Contractor and its sureties for said breach or default.

(D) Waiver of Remedies for any Breach: In the event that MET elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by MET shall not limit MET's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

Certification of Contractor Regarding Debarment, Suspension, Other Ineligibility and Voluntary Exclusion

Title 49 CFR Part 29 and Executive Order 12549 establish regulations pertaining to DOT and other federal contractors at any tier, and procedures applicable to their debarment, suspension, ineligibility or exclusion from participation in any DOT or other federal contracts.



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Contractors are required to review the above regulations and to complete and submit a Certification Regarding Debarment, Suspension, Other Ineligibility and Voluntary Exclusion (Section 1.4.15), or furnish an explanation as to why the Certification cannot be provided. The Contractor agrees by submitting this Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower-tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by MET. The Contractor further agrees by submitting this Proposal that it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction", in all lower-tier covered transactions over \$25,000 and in all solicitations for lower tier contracts.

Privacy Act

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C.552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights

The following requirements apply to the underlying contract:

(A) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal transit law at 49 U.S.C. 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(B) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying contract:

(1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at 49 U.S.C. 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, Equal Employment Opportunity", as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.



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(2) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623 and Federal transit law at 49 U.S.C. 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(C) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Disadvantaged Business Enterprise (DBE) Utilization

(A) Goal MET Transit sets an overall DBE goal every three years. While the expected percentage of DBE participation may vary from contract to contract due to availability of DBE's, MET believes the overall goals to be realistically obtainable over the year. The amount of DBE participation will be determined by the dollar value of the work subcontracted to DBE's, as compared to the total value of all work performed under this contract and/or by the percentage of the net profit that the parties agree will be shared by DBE's where a joint venture is entered into for the completion of the project.

(B) Instructions to Bidders and Contractors It is the policy of MET that equal opportunity to participate in its procurement will be provided to DBEs. To accomplish this objective, MET requires, as applicable, all bidders and Contractors to complete and return with the Proposal submittals, all DBE Forms (included in the Exhibit Section of these Solicitation Documents), which obligates the Contractor to assert a good faith effort to attain the specified goal for DBE participation. A bidder/Contractor may satisfy the requirements of DBE Form A by having DBE status, by subcontracting portions of the work to DBEs, and/or by entering into a joint venture with DBEs.

(C) Requirements, Terms and Conditions

A DBE is defined as a small business concern that is owned and controlled by socially and economically disadvantaged individuals. These socially and economically disadvantaged individuals must own 51 percent of the business, and they must control the management of the business. Socially and economically disadvantaged individuals include Women, Black Americans, Hispanic Americans, Asian-Pacific Americans, Asian-Indian Americans, or any other minorities or individuals found to be disadvantaged by the Small Business Administration (SBA), pursuant to Section 8(a) of the Small Business Act. To be accepted as a qualified DBE, a Contractor must be certified as a DBE by MDOT before the time of proposal submittal. The MDOT DBE Program Manager is Wendy Stewart (406-444-6337) or westewart@mt.gov. MDOT's DBE certification application forms are available, for Contractors interested in securing MDOT DBE certification prior to proposal opening, on line at www.mdt.mt.gov/business/contracting/civil/dbe.shtml. Any questions regarding MET's DBE program or questions regarding the DBE forms should be directed to Wendy Stewart.

Notice of Federal Requirements

New Federal laws, regulations, policies, and administrative practices may be established after the date of this Contract, which may apply to this Contract. If Federal requirements change, the changed requirements will apply to the Contract or the performance of work under the Contract as required. All standards or limits set forth in this Contract to be observed in the performance of the work are minimum requirements



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Conditions and Non-Collusion Agreement

We have read and agree to the conditions and stipulations contained herein and to the Standard Terms and Conditions contained on the attached.

We further agree to furnish the product/services specified at the prices stated herein. We additionally agree to deliver the product/services to the location and by the date set forth herein, if applicable.

In signing, you also certify that you have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a quote; that this quote has been independently arrived at without collusion with any other competitor; that the above statement is accurate under penalty of perjury.

Legal Name of Firm/Corporation

Authorized Signature

Address

Printed Name

City/State/Zip

Title

Date

Telephone Number