



PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into on _____, by and between the **CITY OF BILLINGS, MONTANA** (Billings Logan International Airport), a municipal corporation organized and existing under the laws of the State of Montana, 1901 Terminal Circle, Room 216, Billings, Montana 59105, hereinafter referred to as "City," and the M-B Companies, Inc., hereinafter referred to as "Seller."

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

1. **PRODUCT PURCHASED:** Seller agrees to sell and City agrees to purchase the goods ("Product") as described below and, if applicable, per written City's specifications and Seller's proposal attached hereto as Attachment A, which are incorporated into this Agreement by this reference. The Product being purchased consists of:

- Item MB2 Multi Tasking Snow Removal Vehicle with plow blade and sander**
- MB2 Multi Tasking Snow Removal vehicle with plow blade and deicer**
- MB3 Dedicated Front Mount Broom**
- MB4 High Speed Rotary Blower**

<u>Price</u>	<u>\$639,069.24</u>
	<u>\$653,545.80</u>
	<u>\$741,414.56</u>
	<u>\$875,252.10</u>
	<u>Total: \$2,909,281.70</u>

- And as per attached;
- Cooperative Purchasing Sourcewell Agreement 111522
- M-B Companies, Inc, price quotes
- AEBI Schmidt Group specifications

2. **PRICE:** The City agrees to pay \$2,909,281.70 as the purchase price. All prices are inclusive of any applicable Local, State, or Federal taxes that may be applied to the Product to be purchased. The purchase price is free on board at the place of delivery and Seller may not impose any additional, shipping, delivery, or storage charges.

3. **DELIVERY AND PAYMENT:** Seller agrees to deliver the above described Product to City within 450 days of receipt of City's order unless otherwise provided in this Agreement. Delivery will occur at the Billings Logan International Airport, Airport Operations Center, 2281 Overlook Dr, Billings, Montana, 59105 or at a place otherwise selected by City. Upon delivery, City may inspect the Product to ensure that it meets City specifications, and Seller may obtain specifications from City upon request. If the Product meets City specifications, City shall tender the purchase price stated above to Seller through the City's normal claim process.

4. **SPECIFICATIONS:** Seller agrees that this Product complies with the City's specifications provided to Seller and with the Seller's proposal thereto as accepted by the City. Unless otherwise agreed to by the City, the City's specifications govern and control in the event of inconsistencies with the Seller's response to the same.



5. REQUIRED FEDERAL CLAUSES:

General Civil Rights Provisions: The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

Compliance with Nondiscrimination Requirements: During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

a. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

b. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

d. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- 1) Withholding payments to the Contractor under the contract until the Contractor complies; and/or
- 2) Cancelling, terminating, or suspending a contract, in whole or in part.

f. **Incorporation of Provisions:** The Contractor will include the provisions of Paragraphs a. through f. in every subcontract, including procurements of materials and



leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following nondiscrimination statutes and authorities; including, but not limited to:

- a. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- b. 49 CFR Part 21 (Nondiscrimination in Federally assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- c. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- d. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- e. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- f. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- g. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- h. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR Parts 37 and 38;
- i. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP), and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Federal Regulations at 74087 to 74100);



I. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq*).

6. DEFAULT AND TERMINATION: If Seller fails to deliver the Product as set forth in Paragraphs 2 and 3 above, or violates any provision of this Agreement, or if the Product fails to meet City's specifications, City may, at its option, declare the Seller in default and immediately cancel and rescind this Agreement. Thereafter, City may procure substitute Product to replace the Product described herein. In such event, Seller is liable to City for the difference between the price set forth herein and the price paid by City for replacement Product. Additionally, the City may pursue any other remedy it has at law or in equity.

7. WARRANTY: Unless superseded or supplemented by an express warranty, Seller represents and warrants that the Product is covered by implied warranties for merchantability and fitness for the particular purpose for which it has been purchased.

8. ASSIGNMENT: Seller may not assign this Agreement or any of its rights hereunder without the express written consent of City.

9. ENTIRE AGREEMENT: This Agreement, including its appendices, if any, is the entire understanding between the parties relating to the subject matter contained herein. No agent or representative of either party has authority to make any representations, statements, warranties or agreements not herein expressed and all modifications or amendments of this Agreement, including the appendices, must be in writing and signed by an authorized representative of each of the parties hereto.

10. GOVERNING LAW AND VENUE: This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

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

CITY OF BILLINGS, MONTANA

M-B Companies, INC

WILLIAM A. COLE
MAYOR

SIGNATURE

APPROVED AS TO FORM

PRINT NAME

CITY ATTORNEY'S OFFICE

PRINT TITLE

ATTEST

PHONE NUMBER



DENISE BOHLMAN, CITY CLERK