



**GASOLINE AND DIESEL FUEL
PRODUCTS AND SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into October 26, 2024, 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 **TOWN AND COUNTRY SUPPLY ASSOCIATION**, of P.O. Box 367, Laurel, MT 59044, hereinafter referred to as “**CONTRACTOR**.”

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 **CONTRACTOR** as an independent contractor to provide fuel and diesel products , more accurately described below and in the Scope of Work attached hereto as Exhibit “A” and by this reference made a part hereof.

Item	Vendor Markup
Unleaded Gasoline Regular Grade 87 Octane no more than 10% ethanol	
Unleaded Gasoline Mid-Grade 89-90 Octane no more than 10% ethanol	
Unleaded Gasoline 92 Octane, no ethanol	
No. 1 ULS Red Dyed Diesel Fuel Min. Cetane 40	
No. 2 ULS Red Dyed Diesel Fuel Min. Cetane 40 (Summer Blend)	
No. 2 ULS Red Dyed Diesel Fuel with additive Min. Cetane 40 (Winter Blend)	
- \$.0210/gal	
-.0210/gal	
\$0.014/gal	
- \$.0180/gal	
- \$.0420/gal	
- \$.0380/gal	

- 2. **EFFECTIVE DATE:** This **AGREEMENT** is effective upon the date of its execution and will terminate on October 27, 2026. Renewals of this **AGREEMENT**, by mutual agreement of both parties, may be made at one-year intervals, or any interval that is advantageous to the **CITY**, not to exceed a total of seven (7) years including the original term. This **AGREEMENT** will be exclusive for the **CITY** locations listed.

- 3. **PRICE:** The **CITY** agrees to pay the amount per gallon in Section 1 and on the attached Exhibit A as the markup price. Fuel product prices are to be calculated using the following formula: OPIS/Rack Daily Average Gross Price in effect on



the date of delivery + Applicable Taxes/Fees + or - Vendor Markup = Invoice Price Per Gallon.

Taxes/Fees: All taxes and fees must be listed separately on each invoice.

The **CITY** is exempt from Federal Excise Taxes (#81-6001237).

The purchase price is free on board at the place of delivery and **CONTRACTOR** may not impose any additional, shipping, delivery or storage charges.

CONTRACTOR shall invoice the **CITY** for all products purchased/services rendered pursuant to this **AGREEMENT**. Invoicing of fuel purchases shall be directed to the department of the **CITY** with authority over the specific delivery location. A copy of the delivery ticket will be left at the delivery location. The **CONTRACTOR** shall secure the proper billing and invoicing address for each location(s).

Invoices must include the following:

- 1) Delivery Date
- 2) Gallons delivered of each product individually listed.
- 3) OPIS/Rack Daily Average Gross rack price per gallon of each product on the delivery date.
- 4) Vendor Markup for each product individually listed (as per contract).
- 5) Total price per gallon (OPIS/Rack Daily Average Gross pricing plus Vendor Markup).
- 6) Applicable Taxes/Fees
- 7) Total delivered cost (Total price per gallon plus Taxes/Fees times the number of gallons delivered).

The prices established in this **AGREEMENT** may be extended to other political subdivisions within the State of Montana solely at the **CONTRACTOR'S** discretion.

4. **DELIVERY AND PAYMENT:** **CONTRACTOR** agrees to deliver the above-described goods or product to **CITY** within twenty-four (24) hours of receipt of **CITY'S** order unless otherwise provided in this **AGREEMENT**. Delivery will occur at various locations selected by the **CITY** or at a place otherwise selected by **CITY**. Upon delivery, **CITY** may inspect the goods or product to ensure that it meets **CITY** specifications, and **CONTRACTOR** may obtain specifications from **CITY** upon request. If the Product meets **CITY** specifications, **CITY** shall tender the purchase price stated above to **CONTRACTOR** through the **CITY'S** normal claim process.

All payment terms will be computed from the date of delivery of supplies or services or receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the **CITY** is allowed 30 days to pay such invoices. All applicable early payment discounts will be passed on to the **CITY**.

Delivery tickets (bill of lading) must accompany the delivery of fuel and must include the quantity in gross gallons; designated refinery where fuel was loaded; product/brand description and date loaded.

5. **COMMUNICATION:** **CONTRACTOR** must provide the **CITY** with daily fuel pricing by electronic email or fax. The information must include:
 - OPIS/Rack Daily Average Gross pricing per gallon
 - Taxes and Fees
 - Vendor Markup
 - Total price per gallon to the **CITY**

6. **SPECIFICATIONS:** **CONTRACTOR** agrees that this Product complies with the **CITY'S** specifications provided to **CONTRACTOR** and with the **CONTRACTOR'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 **CONTRACTOR'S** response to the same.

7. **SCOPE OF WORK:** The **CONTRACTOR** shall provide the products and perform the services outlined in Exhibit "A". In performing these services, the **CONTRACTOR** shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefor, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

8. **INCORPORATION BY REFERENCE:** All exhibits and addenda attached hereto, as well as any bid or proposal referenced, are hereby incorporated into this **AGREEMENT** and made a part hereof. If there is any conflict between such exhibits or addenda and the terms of this **AGREEMENT**, the terms of this **AGREEMENT** shall control.

9. **INDEPENDENT CONTRACTOR STATUS:** The parties agree that **CONTRACTOR** is an independent contractor for purposes of this **AGREEMENT** and may not to be considered an employee of the **CITY** for any purpose. **CONTRACTOR** 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. **CONTRACTOR** is not authorized to represent the **CITY** or otherwise bind the **CITY** in any dealings between **CONTRACTOR** and any third parties.

10. **INDEMNITY:**

The **CONTRACTOR** SHALL:

- A. Indemnify and hold **CITY**, its officers, agents and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of **CONTRACTOR** or its agents or employees.
- B. Not indemnify and hold the **CITY** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the **CITY** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- C. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **CITY** and the **CONTRACTOR**, the **CONTRACTOR** shall indemnify and hold the **CITY** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, to the extent caused by the **CONTRACTOR'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CONTRACTOR'S** performance pursuant to this **AGREEMENT**.

The **CITY** SHALL:

- D. Indemnify and hold **CONTRACTOR**, its officers, agents and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of **CITY** or its agents or employees.
- E. Not indemnify and hold the **CONTRACTOR** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the **CONTRACTOR** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- F. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **CONTRACTOR** and the **CITY**, the **CITY** shall indemnify and hold the **CONTRACTOR** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, to the extent caused by the **CITY'S** or any subcontractor's wrongful or negligent acts occurring as a



result from the **CITY'S** performance pursuant to this **AGREEMENT**.

8. INSURANCE:

A. The **CONTRACTOR** shall maintain in good standing the insurance described in this Section. Before rendering any services under this **AGREEMENT**, the **CONTRACTOR** shall furnish the **CITY** with proof of insurance in accordance with this Section.

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

- Workers' compensation and employer's liability coverage as required by Montana law.
- Commercial general liability, including contractual liability assumed under an insured agreement and personal injury coverage's \$750,000 per claim and \$1,500,000 per occurrence.
- Automobile liability \$1,500,000 per accident.

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 Worker's Compensation Policies.

CONTRACTOR 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. **CONTRACTOR** shall maintain workers' compensation insurance coverage for all members and employees of **CONTRACTOR's** business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

CONTRACTOR 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.

9. **WARRANTY:** Unless superseded or supplemented by an express warranty, **CONTRACTOR** represents and warrants that the Product(s) are covered by implied warranties for merchantability and fitness for the particular purpose for which they have been purchased.

10. **COMPLIANCE WITH LAWS:** **CONTRACTOR** agrees to comply with all federal, state, and local laws, ordinances, rules and regulations. **CONTRACTOR** agrees to purchase a **CITY** business license.

11. NONDISCRIMINATION:

- A. **CONTRACTOR** shall, in performance of work under this **AGREEMENT**, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. **CONTRACTOR** is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by **CONTRACTOR** subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016. **CONTRACTOR** agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this **AGREEMENT**.
- B. The **CONTRACTOR** 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.

The **CONTRACTOR** and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

The **CONTRACTOR** and any subcontractor shall abide by the requirements of 41 CFR 60-1.4, which states employees or applicants may not be discharged or in any other manner discriminated against because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation,

proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the **CONTRACTOR'S** legal duty to furnish information.

- C. The **CONTRACTOR** shall comply with any and all reporting requirements that may apply to it that the **CITY** may establish by regulation.
 - D. The **CONTRACTOR** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
 - E. The **CONTRACTOR** shall include the provisions of Subsections A through D of this Section in every subcontract or purchase order under this **AGREEMENT**, so as to be binding upon every such subcontractor or vendor of the **CONTRACTOR** under this **AGREEMENT**.
 - F. The **CONTRACTOR** agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
12. **DEFAULT AND TERMINATION:** If **CONTRACTOR** fails to deliver the goods or product, or violates any provision of this **AGREEMENT**, or if the goods or product fails to meet **CITY'S** specifications, **CITY** may, at its option, declare the **CONTRACTOR** in default and immediately cancel and rescind this **AGREEMENT**. Thereafter, **CITY** may procure substitute goods or product to replace the goods or product described herein. In such event, **CONTRACTOR** is liable to **CITY** for the difference between the price set forth herein and the price paid by **CITY** for replacement goods or product. Additionally, the **CITY** may pursue any other remedy it has at law or in equity.
13. **LIAISON:** **CITY's** designated liaison for this **AGREEMENT** is Nick Westburg and **CONTRACTOR's** designated liaison for this **AGREEMENT** is Josh Starr.
14. **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.
15. **SEVERABILITY:** Any provision or part of the **AGREEMENT** held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the **CITY** and the **CONTRACTOR**, who agree that the **AGREEMENT** shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
16. **SUCCESSORS AND ASSIGNS:** Neither the **CITY** nor the **CONTRACTOR** shall assign, transfer or encumber any rights, duties or interests accruing from this **AGREEMENT** without the written consent of the other.



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

CITY OF BILLINGS, MONTANA

**TOWN AND COUNTRY SUPPLY
ASSOCIATION**

WILLIAM A. COLE, MAYOR

SIGNATURE

APPROVED AS TO FORM:

PRINT NAME

By _____
CITY ATTORNEY'S OFFICE

PRINT TITLE

ATTEST:

DENISE BOHLMAN, CITY CLERK



EXHIBIT A

In addition to any terms contained herein, **CONTRACTOR** shall provide:

1. Standard unleaded gasoline with a minimum anti-knock index of 87, 89 or 91, R+M/2, whichever product is ordered by the **CITY**. Minimum octane levels will be determined by availability, facility location/elevation and the specifications contained herein. Unleaded products shall comply with ASTM D4814-01 specifications. Products supplied must be delivered in compliance with ordinances governing regulatory actions, such as oxygenated fuel, unless indicated otherwise by the agency.
2. Ultra low sulfur red dyed diesel fuel with a minimum 40 cetane index or maximum 35 volume percent aromatic; and sulfur content of 15 ppm maximum; and meeting ASTM D975-02 specifications.

The City requires only Ultra Low Sulfur Dyed Diesel in all cases. Diesel #1 is used primarily for blending with #2 diesel in low temperature conditions.

Diesel #2 is used primarily for vehicle fuel purposes. Diesel #2, used for vehicle fuel in low temperature conditions, must have antigel additives added prior to delivery by the contractor.

Blending and/or winter additives are required to prevent congealing of diesel fuel in low temperature conditions. Fuel provided must be blended by contractor to ensure it is suitable for satisfactory operation of the equipment for which its use is intended at the temperatures that can reasonably be expected to occur. Vendors are required to ensure appropriate cold flow improver additives and/or blending are used to achieve a cold filter plugging point (CFPP) of a minimum of -30 degrees Fahrenheit for use from approximately November 1, through March 31. Additional consideration must be given to fuel system design, equipment protection for cold weather operation, type of operation, area of operation, and unusual weather or operating conditions. Blended fuels may only be invoiced at the actual quantity of each gallon of each fuel grade delivered. If an extra fee is required for blending and winter additives, it must be included in the Vendor Markup.

All ethanol products delivered shall comply with ASTM D5798-98a, including seasonal blending adjustments. Gasohol not to exceed a 10% blend may be accepted, provided that the gasohol is priced the same or less as non-gasohol products. All bids for gasoline products will be based on the vendor mark-up over the OPIS/Rack Daily Average Gross price for regular unleaded fuel only. Contractors will be afforded the opportunity to supply gasohol provided it is available at the corresponding OPIS/rack price for regular unleaded fuel. Vendors shall indicate locations that are to be supplied with gasohol.



Fuel deliveries may be "spot" tested to verify compliance. Deliveries and/or payment may be refused if quality is unacceptable. If fuels do not comply with the established specifications, all costs for testing shall be paid by the contractor. In addition, if a contaminated fuel delivery requires a tank cleanup, (including any equipment fueled as a result of contractor's delivery of contaminated or specification non-compliant product), the cost for removal of the contaminated or non-compliant fuel and the cost for the cleanup shall be paid by the contractor. Contractor agrees to pump the tank to remove contractor supplied contaminated or non-compliant fuel within twenty-four (24) hours after receiving written notification that the product does not meet contract specification requirements.

The City reserves the right to collect a sample of fuel from the contractor's delivery truck at time of delivery for purposes of verification of specification compliance.

Note: Nothing herein shall preclude conformance with present and future federal, state, or local regulations.

City reserves the right to refuse deliveries that are not accompanied by priced and itemized delivery tickets, and/or hold payment without penalty until properly executed invoices/delivery tickets are submitted.

Throughout the term of this contract, the City will randomly verify invoice prices. Any invoice for which verification cannot be achieved using the above formula, will be returned unpaid to the originating vendor for correction.

Contractor Responsibilities:

Contractors agree to comply with the following term contract requirements and responsibilities:

Notification of Delivery

Fuel shall be delivered on an "as needed" basis as per notification from the City to the term contract-holding vendor.

Lead Time

Delivery shall be required not more than Twenty-Four (24) hours after notification by the City. Should the term contract holding vendor, for any reason whatsoever, be unable to make delivery of the requested fuel within the twenty-four (24) hour period, the City of Billings, reserves the right to purchase fuel, as necessary, from any other available source. The contractor that was unable to supply will be liable for any increase in price to the City, if the price from the other source is more



than from the contractor.

Receipt of Fuel Deliveries

The contractor must utilize proper equipment to prevent fuel spillage during delivery. One of the following methods shall be required as documentation of delivery of fuel per location:

- Where installed, metering devices shall be used by the term contract holding vendor when making deliveries.
- Where metered delivery is not possible, a "stick" measurement may be taken by an employee of the City receiving the product as a receipt of the delivered quantity of fuel.
- In all cases an employee of the City must be informed of the delivery truck arrival, afforded an opportunity to observe/confirm off-loading and sign for receipt.

Future Fuel Tax Changes: Federal, state and/or local fuel taxes may increase or decrease during the term of the contract. After a change occurs, the vendor will submit invoices reflecting the change and the City will pay accordingly. Changes in the fuel tax structure shall not alter the "Vendor Markup" figure upon which award of this bid is based.

EXHIBIT B

CURRENT DELIVERY LOCATIONS

	<u>Tank Capacity</u>	
<u>Fleet Services-BOC (4848 Midland Road)</u>		
(2)	5,000	No Lead
(2)	10,000	Diesel
<u>Public Utilities 2251 Belknap & WWTP(behind Fairgrounds, exit off Hwy 87 E.)</u>		
(1)	10,000	No Lead
(1)	10,000	Diesel
<u>Landfill (South of City)</u>		
(1)	10,000	Diesel
<u>Fire #1 2305 8th Ave. North</u>		
(1)	450	No Lead
(1)	850	Diesel
<u>Fire #2 501 South 28th St. South</u>		
(1)	1,000	Diesel
(1)	1,000	Diesel
<u>Fire #3 1928 17th St. West</u>		
(1)	500	Diesel
<u>Fire #5 605 S. 24th St. West</u>		
(1)	500	No Lead
(1)	500	Diesel
<u>Fire #6 1601 St. Andrews</u>		
(1)	500	Diesel
<u>Airport (Shop) 2281 Outlook Dr.</u>		
(1)	3,000	Diesel
(1)	10,000	Diesel
(1)	10,000	No Lead
(1) Backup Generator	800	Diesel
<u>Airport Quick Turn Around Car Wash Facility - 3301 Overlook Drive</u>		
(1)	20,000	No Lead
<u>Airport Backup Generator for Terminal Building - 1901 Terminal Circle</u>		
(1)	800	Diesel
<u>Airport (Field Generators)</u>		
(1)	500	Diesel
<u>MET 1705 Monad Rd.</u>		
(1)	3,000	No Lead
(2)	8,000	Diesel
<u>Cemetery 1704 Central</u>		
(1)	350	Diesel
(1)	350	No Lead

The listing is the capacity of the tank and not the amount of fuel that would be ordered for each delivery.



EXHIBIT C

FTA ASSISTED REQUIRED CLAUSES FOR MATERIALS AND SUPPLIES 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 DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, 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.

Federal Changes

Contractor shall at all times 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.

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. 5532, 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 US 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.

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.

Provisions for Resolution of Disputes or Breaches

The Recipient agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly: 1) The Recipient agrees to notify FTA of any current or prospective major dispute, breach, default, or litigation pertaining to the Project. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees in informing the FTA before doing so. 2) The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share committed to the Project, of any proceeds derived from any third party recovery, except that liquidated damages recovered may be returned to the Project Account in lieu of returning the Federal Share to the Federal Government. 3) The Recipient agrees to pursue all legal rights available under any third party contract. 4) FTA reserves the right to concur in any compromise or settlement of any claim involving Project and the Recipient. 5) FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

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.

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 to inspect and audit all data and records of 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.

No Federal Government obligations to third parties by use of a disclaimer

The recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any sub recipients, any third party contractor, or any other person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of the Project. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, sub agreement, or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including the sub recipients and third party contractor.

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, 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.

Clean Water

- (A) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (B) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Clean Air

- (A) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (B) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.



Energy Conservation

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

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.

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.

Restrictions on Lobbying

Section 1352 of Title 31, United States Code, provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person by influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement.

Each Contractor is required to review the above referenced Regulations and complete and submit a Certification of Compliance with Federal Lobbying Regulations (Section 1.4.16). Pursuant to federal regulations, the Contractor is required to have all



subcontractors (at any tier) providing more than \$100,000 towards the contract also complete with this Certification, to be included with the Contractor's Proposal.

Contract 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.

Notification of Federal Participation

In the announcement of any third party contract award for goods for services (including construction services) having an aggregate value of \$500,000 or more, MET agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract.

Disadvantaged Business Enterprise (DBE) Utilization

- (A) **Goal:** MET Transit sets an annual overall DBE goal each year. 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 MOOT before the time of proposal submittal. The MOOT DBE Specialist is Maggie Metzger, (406-444-6337). MDOT's DBE certification application forms are available, for Contractors interested in securing MOOT 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 Maggie Metzger.