



**Planning Advisory Board/Zoning Commission  
Agenda April 09, 2024  
2 Park Drive South, Great Falls, MT  
Commission Chambers, Civic Center  
3:00 PM**

In order to honor the Right of Participation and the Right to Know (Article II, Sections 8 and 9 of the Montana Constitution), the City of Great Falls and Planning Advisory Board/Zoning Commission are making every effort to meet the requirements of open meeting laws:

- The agenda packet material is available on the City's website: <https://greatfallsmt.net/meetings>. The Public may view and listen to the meeting on government access channel City-190, cable channel 190; or online at <https://greatfallsmt.net/livestream>.
- Public participation is welcome in the following ways:
  - Attend in person. Please refrain from attending in person if you are not feeling well.
  - Provide public comments via email. Comments may be sent via email before 12:00 PM on Tuesday, April 9, 2024 to: [jnygard@greatfallsmt.net](mailto:jnygard@greatfallsmt.net). Include the agenda item or agenda item number in the subject line, and include the name of the commenter and either an address or whether the commenter is a city resident. Written communication received by that time will be shared with the Planning Advisory Board/Zoning Commission and appropriate City staff for consideration during the agenda item and before final vote on the matter; and, will be so noted in the official record of the meeting.

**OPENING MEETING**

1. Call to Order - 3:00 P.M.
2. Roll Call - Board Introductions

**Dave Bertelsen - Chair**

**Tory Mills - Vice Chair**

**Julie Essex**

**Lindsey Gray**

**Pat Green**

**Samantha Kaupish**

**Jake Schneiderhan**

3. Staff Recognition
4. Approval of Meeting Minutes - March 26, 2024

**BOARD ACTIONS REQUIRING PUBLIC HEARING**

5. Public Hearing – A Zoning Map Amendment to change the zoning for the property addressed as 1525 3<sup>rd</sup> St NW and legally described as Lot 2 of Riverview Tracts 5<sup>th</sup> Supplement, Section

2, T20N, R3E, P.M.M., Cascade County, Montana, from M-2 Mixed-use Transitional to C-2 General Commercial.

## **BOARD ACTIONS NOT REQUIRING PUBLIC HEARING**

6. Section 5303 Federal Transit Administration Funding Contracts with the Montana Department of Transportation and the Great Falls Transit District

## **COMMUNICATIONS**

### **PUBLIC COMMENT**

*Public Comment on any matter and that is within the jurisdiction of the Planning Advisory Board/Zoning Commission. Please keep your remarks to a maximum of five (5) minutes. Speak into the microphone, and state your name and address for the record.*

### **ADJOURNMENT**

*(Please exit the chambers as quickly as possible. Chamber doors will be closed 5 minutes after adjournment of the meeting.)*

*Assistive listening devices are available for the hard of hearing, please arrive a few minutes early for set up, or contact the City Clerk's Office in advance at 455-8451. Wi-Fi is available during the meetings for viewing of the online meeting documents.*

*Planning Advisory Board/Zoning Commission meetings are televised on cable channel 190 and streamed live at <https://greatfallsmt.net>. Meetings are re-aired on cable channel 190 the following Thursday at 7 p.m.*

**MINUTES OF THE MEETING**  
**GREAT FALLS PLANNING ADVISORY BOARD/ZONING COMMISSION**  
**March 26, 2024**

**CALL TO ORDER**

The regular meeting of the Great Falls Planning Advisory Board/Zoning Commission was called to order by Chair Dave Bertelsen at 3:00 p.m. in the Commission Chambers at the Civic Center

**ROLL CALL & ATTENDANCE**

**UPDATES CONCERNING PROCESS OF MEETINGS**

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- Public participation is welcome in the following ways:
  - Attend in person. Please refrain from attending in person if you are not feeling well.
  - Provide public comments via email. Comments may be sent via email before 12:00 PM on Tuesday, March 26, 2024 to: [jnygard@greatfallsmt.net](mailto:jnygard@greatfallsmt.net). Include the agenda item or agenda item number in the subject line, and include the name of the commenter and either an address or whether the commenter is a city resident. Written communication received by that time will be shared with the City Commission and appropriate City staff for consideration during the agenda item and before final vote on the matter; and, will be so noted in the official record of the meeting.

**Planning Board Members present:**

Dave Bertelsen, Chair

Tory Mills, Vice Chair

Julie Essex

Samantha Kaupish

Jake Schneiderhan

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**Planning Board Members absent:**

Lindsey Gray

Pat Green

**Planning Staff Members present:**

Brock Cherry, Director Planning and Community Development

Lonnie Hill, Deputy Director Planning and Community Development

Rachel Campbell, Permit Technician

Kayla Kryzsko, Assistant City Planner

Jamie Nygard, Sr. Administrative Assistant

**Other Staff present:**

David Dennis, City Attorney

Mr. Cherry affirmed a quorum of the Board was present.

**MINUTES**

Chair Bertelsen asked if there were any comments or corrections to the minutes of the meeting held on February 13, 2024. Seeing none, the minutes were approved.

**COMMISSION ACTIONS REQUIRING A PUBLIC HEARING**

**Conditional Use Permit (CUP) to allow handling of a hazardous substance, hydrogen sulfide (H<sub>2</sub>S), which is listed as an ingredient of asphalt, for the property addressed as 6501 18<sup>th</sup> Ave N and legally described as Lot 6A of AgriTech Park.**

Lonnie Hill, Deputy Director, presented to the Commission. He stated that the applicant, Ponderosa Solutions LLC, was requesting a Conditional Use Permit to allow handling of a hazardous substance on the 19.9 acres at 6501 18<sup>th</sup> Ave N. The site is zoned Planned Unit Development (PUD).

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Mr. Hill presented an Aerial Map, Zoning Map, Site Photos, and Preliminary Site Plan.

Mr. Hill stated that the proposal was for transloading and miscellaneous rail services for local customers. The commodities would include asphalt, lumber, drywall and other building materials, grains for livestock feed, aggregates, packaged goods that include food and merchandise.

Mr. Hill stated that Ponderosa Solutions could offer other common transload rail services as well, such as graffiti cleaning, stencil repairs, railcar heating, railcar cleaning, equipment repair and maintenance, etc.

Mr. Hill gave the board some background on AgriTech Park and stated that it was approved by City Commission in 2012. Resolution 9993 was the annexation of 193.7 acres and Ordinance 3097 assigned PUD zoning with underlying zoning of I-2, Heavy industrial. He stated the intent was to provide “shovel-ready” heavy industrial rail-served lots.

Mr. Hill stated the CUP request was for a transloading facility to transload asphalt, which is defined as a “freight terminal” land use within Title 17 of OCCGF. A freight terminal is a permitted land use upon the subject property. 17.20.3.060 states that certain land uses shown as permitted may be a conditional use on any use that emits air contaminants or potentially offensive odors outside of the building, or that handles radioactive materials, hazardous substances, hazardous waste, or regulated substance and shall be considered a conditional use in every circumstance.

Mr. Hill stated that the applicant states that the asphalt is non-penetrating, non-flammable, and non-combustible, and therefore it is low-risk when handling.

Mr. Hill stated the project is located within Neighborhood Council #4 and they were notified of the request and the applicant is presenting to them on March 28, 2024. Their recommendation will be presented to City Commission.

Mr. Hill presented the Basis of Decision – Conditional Use Permit

1. The zoning and conditional use is consistent with the City’s Growth Policy and applicable neighborhood plans, if any.
  - Economic Policy 3.4 – Continue efforts to expand, retain, and attract new business to Great Falls
  - Physical Policy 4.2 - Implement the City’s land use codes to protect the health, safety, and welfare of its residents.
2. The establishment, maintenance, or operation of the conditional use will not be detrimental to, or endanger the health, safety, morals, comfort or general welfare.
  - The CUP allows the City to review the request and place appropriate conditions to help mitigate or reduce the total off-site impacts a project may have on the surrounding properties and environment.
  - The conditions listed under the Conditions of Approval apply specific measures to protect the health, safety, and general welfare of the public.

3. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.
  - The property is within an approved industrial park that is designed to accommodate heavy industrial uses.
  - The surrounding properties have similar heavy industrial uses.
  - The proposed project will meet all the development standards in the PUD Ordinance and underlying I-2 zoning district.
  - The conditions imposed on the project should mitigate any potential harmful effects on Giant Sprints State Park and nearby environmentally sensitive areas.
4. The conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
  - The conditions of approval are proposed to minimize all effects on the surrounding area to be developed.
5. Adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided.
  - Ingress and egress to the proposed facility can be served through the existing rail line to the north and vehicular access to 18<sup>th</sup> Avenue North.
6. The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the City Commission.
  - The proposed project will conform to the applicable regulations of the PUD Ordinance and underlying I-2 zoning district and all codes and ordinances of the City of Great Falls, the State of Montana, and all other applicable regulatory agencies.

Mr. Hill presented the Conditions of Approval.

1. Modifications: It is understood that minor changes are often necessary during the development and operation of a conditional use. The Administrator is hereby authorized to permit minor changes. The Administrator is the City employee assigned by the City Manager to administer conditional uses.
2. Changes in Use: Conditional uses are regulated as such because the use presents the possibility of significant impacts on the community. Therefore, changes in conditional uses must be strictly limited. A significant change in the type or level of activity, including changes in the number of employees or operating hours, or changes in the types of materials present on the site, may void the conditional use permit. Proposed changes shall be submitted to the Administrator, who may require that the permit be amended following the same public process for adoption.
3. Expiration: The conditional use permit shall expire one year after the date of issuance, if the operation has not been established for the applicant's request. The Administrator may extend the expiration date by up to one year if substantial work is ongoing.

4. Abandonment: If a conditional use ceases to operate for more than six months, the conditional use permit is void.
5. Chemicals: The applicant is specifically approved for handling hydrogen sulfide (HS<sub>2</sub>). Handling of any other hazardous substance will require a new public review and permitting process for such changes.
6. Emergency Management Plan: An Emergency Management Plan shall be updated and approved by the Great Falls Fire Department before operation of the transloading facility commences. The plan shall be reviewed annually at the time the applicant renews its Safety Inspection Certificate (SIC) and revised as necessary to ensure compliance with the City's adopted fire code and other applicable regulations.
7. Spill Prevention and Control Plan: The applicant shall review and update if necessary the Spill Prevention and Control Plan, in accordance with the requirements under OCCGF 13.12.080.G.3 to the Director of Public Works for review and approval before operation of the transloading facility commences.
8. Industrial Wastewater Survey: The applicant shall provide an updated Industrial Wastewater Survey to the Director of Public Works for review and approval as product inventory changes.
9. Acceptance of Conditions: The amendment will not go into effect until the applicant acknowledges in writing that it has received, understands, and agrees to comply with the conditions of approval.

**APPLICANTS PRESENTATION**

Frank Paolucci, with Ponderosa Solutions LLC, thanked staff for their effort and assistance. He stated that the project has been in the works for almost 4 years. They look forward to bringing other business opportunities to Great Falls as well.

**PUBLIC QUESTIONS**

None

**BOARD QUESTIONS TO APPLICANT**

None

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## PROPONENTS

Jolene Schalper, Great Falls Development Alliance, thanked staff for their due diligence and stated that they are in full support of the project. She stated that the project is in congruency with the AgriTech Park and that the company is a good business partner for the community. She also stated that the request is an appropriate use of the conditional use permit process. She also added that AgriTech Park has the only shovel ready, heavy industrial, rail served sites, in Cascade County.

## OPPONENTS

None.

## BOARD DISCUSSION AND ACTION

Mr. Bertelsen stated that the Conditional Use Permit will entice other businesses to transload in the area and that it would be a great addition to the community.

**MOTION:** That the Zoning Commission recommend the City Commission approve the Conditional Use Permit as legally described in the Staff Report and the accompanying Findings of Fact, subject to the Conditions of Approval being fulfilled by the applicants.

Made by: Mr. Mills

Second by: Mr. Schneiderhan

Vote: All in favor, the motion passed 5-0

## COMMUNICATIONS

Mr. Cherry announced to the Board that Lonnie Hill is the new Deputy Director for Planning and Community Development.

Mr. Cherry gave an update on the Growth Policy Update and stated that staff is working on getting a steering committee assigned. The Planning Board will play a large role in it.



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**PUBLIC COMMENTS**

None.

**ADJOURNMENT**

There being no further business, Chair Bertelsen adjourned the meeting at 3:30 p.m.

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CHAIRMAN DAVE BERTELSEN

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SECRETARY BROCK CHERRY



Meeting Date: April 9<sup>th</sup>, 2024

**CITY OF GREAT FALLS  
PLANNING ADVISORY BOARD / ZONING COMMISSION AGENDA REPORT**

**Item:** Public Hearing – A Zoning Map Amendment to change the zoning for the property addressed as 1525 3<sup>rd</sup> St NW and legally described as Lot 2 of Riverview Tracts 5<sup>th</sup> Supplement, Section 2, T20N, R3E, P.M.M., Cascade County, Montana, from M-2 Mixed-use Transitional to C-2 General Commercial.

**Initiated By:** Town Pump, Inc.  
Represented by Joe Murphy, Big Sky Civil & Environmental

**Presented By:** Lonnie Hill, Deputy Director, Planning and Community Development

**Action Requested:** Recommendation to the City Commission

**Public Hearing:**

1. Chairman of the Commission conducts public hearing, pursuant to OCCGF 1.2.050 and Title 17, Chapter 16, Article 6.
2. Chairman of the Commission closes public hearing and asks the will of the Board.

**Suggested Motion:**

1. Commission Member moves:

“I move that the Zoning Commission recommend the City Commission (approve/deny) the zoning map amendment for the subject property as legally described in the Staff Report to rezone the property from M-2 Mixed-use Transitional to C-2 General Commercial, based on the accompanying Basis of Decision, subject to the Conditions of Approval being fulfilled by the applicants.”

2. Chairman calls for a second, Commission discussion, and calls for the vote.

**Background & Prior Nonconforming Uses:**

The subject property, located at 1525 3rd Street NW, includes a vacant commercial building on 0.87 acres and is currently within the M-2 Mixed-use Transitional Zoning District. The applicant requests a zoning map amendment to rezone the subject property to C-2 General Commercial to allow for the redevelopment of the existing building into a lounge, casino, and provide off-premise alcohol sales. The land use of a casino is not permitted within the M-2 Zoning District, necessitating the request to rezone the property to C-2, which allows a lounge, casino, and off-premise alcohol sales as permitted uses.

The property was most recently the west side location of the restaurant “Best Wok,” which was established in 2016. Before Best Wok, the site was the location of the restaurant “New Peking,” which

included a lounge, casino, and liquor sales. At that time, each use was considered legal nonconforming as they were established upon the property before current zoning regulations. According to OCCGF §17.64.020, if a nonconforming use ceases for any reason for more than twenty-four (24) months, any subsequent use shall conform with this Title. According to City records, the previous uses of a lounge, casino, and liquor sales have not occurred on-site in more than (24) months, and therefore, the establishment of these uses necessitates a rezone to C-2.

### **Zoning Map Amendment Request:**

The subject property is currently within the M-2 Mixed-use Transitional Zoning District. The applicant is requesting the subject property be rezoned to C-2 General Commercial for the purpose of renovating the existing building and site. The properties to the north, east, and south of the subject property are also within the M-2 zoning district. The property west of the subject property, across 3<sup>rd</sup> Street NW, is within the C-2 General Commercial Zoning District, the same district being requested.

According to OCCGF §17.20.2.040 the M-2 District is intended to promote a transition over time to a predominately mixed-use land use pattern. Because of changing economic conditions and other factors, some current uses do not represent the highest and best use, given other more suitable areas. The proposed C-2 District primarily intends to accommodate high-traffic businesses that focus on vehicle traffic. Staff finds the request to rezone to C-2 is appropriate because of the existing conditions of the commercial site and its location upon a principal arterial, 3<sup>rd</sup> Street NW, that can accommodate high-traffic business activity, which is a defining characteristic of the C-2 District.

A zoning map amendment requires a public hearing to be conducted by the Zoning Commission and the City Commission and the surrounding property owners to be notified of the hearings and a sign posted on the property. Public notice for the City Commission public hearing was published in the Great Falls Tribune on March 24, 2024. To date, Staff has yet to receive any public comment regarding the request.

The basis for decision on zoning map amendments, i.e. rezoning or zone changes, is listed in OCCGF §17.16.40.030. The recommendation of the Zoning Commission and the decision of the City Commission shall, at a minimum, consider the criteria which are attached as *Attachment A – Basis of Decision – Zoning Map Amendment*.

### **2013 Growth Policy Update Analysis:**

Staff has reviewed the City's 2013 Growth Policy Update and has concluded that the Growth Policy supports the proposed zoning map amendment. Specifically, the Growth Policy lists physical goals and principles on page 88 that encourage development in areas that can best accommodate it based on infrastructure, access, and proximity to major employers. The Growth Policy also lists policies on page 144 that support the utilization of existing infrastructure and identify underutilized parcels as candidates for redevelopment. Page 155, the Growth Policy states that economic policy should continue efforts to expand, retain, and attract new businesses to Great Falls. Additionally, physical policies on page 162 of the Growth Policy prioritize infill development, including the goal of incentivizing the redevelopment or adaptive reuse of vacant or underutilized properties to maximize the City's existing infrastructure. The supporting findings are listed in *Attachment A – Basis of Decision – Zoning Map Amendment*.

### **The Missouri River Urban Corridor Plan Analysis:**

The subject property is located within the "Primary Impact Area" of The Missouri River Urban Corridor Plan, shown on page 15 of the Plan. A primary impact area includes lands with strong relationships to the river that are most central to the Corridor Plan. Staff notes the subject property does not immediately front the Missouri River and is located upon a principal arterial street frontage, 3<sup>rd</sup> Street NW. This area,

including the subject property, was an existing commercial development at the time of the Plan's adoption. On page 43, the Plan acknowledges existing commercial properties and states a goal to incorporate existing commercial developments into the new community. In addition, the Plan states that commercial development capitalizes on primary street frontage and acts as a buffer, sheltering residential development behind. The Plan also states that the lack of growth is the single biggest barrier to success for the community and the riverfront. As a result, Staff finds consistency between the applicant's request to rezone the property to C-2 to allow for the utilization of an existing vacant commercial site and the Missouri River Urban Corridor Plan.

### **Transportation Analysis:**

The existing site has two accesses onto 3<sup>rd</sup> Street NW along the northwest property line. 3<sup>rd</sup> Street NW is classified as a principal arterial within the Montana Department of Transportation's (MDT) network of roads. MDT currently maintains the street. The proposed use of a lounge, casino, and liquor store is expected to generate trip volumes similar to those generated by the most recent restaurant use. No significant change in traffic impact or demand is anticipated.

### **Neighborhood Council:**

The subject property is located in Neighborhood Council #4. The applicant's representative presented at the Council's regularly scheduled March 7<sup>th</sup> meeting. The Council voted 2-1 to support the rezoning request.

### **Concurrences:**

Representatives from the City's Public Works Department and Fire Department have been involved in the review process for this application. Review of the building permit for the proposed redevelopment will require review from other City departments at the time of building permit submittal. This review will include coordination with the other City Departments to develop the subject property. No code compliance issues have been identified in the interdepartmental review process.

### **Fiscal Impact:**

Approval of this request is expected to result in the redevelopment of an existing vacant commercial building, increasing the property's value. This, in turn, would result in increased revenue for the city and other entities whose revenue is based upon property valuation. The applicant will bear the cost of utility connections and all site improvements. This infill project utilizes existing utility infrastructure and is located within an area already served by City Fire, Police, and EMS services.

### **Staff Recommendation:**

Staff recommends approval of the zoning map amendment with the following conditions:

### **Conditions of Approval:**

1. **General Code Compliance.** The proposed project shall be developed consistent with the conditions in this report and all codes and ordinances of the City of Great Falls, the State of Montana, and all other applicable regulatory agencies.
2. **Land Use & Zoning.** The proposed plans shall conform to the M-2 Mixed-use Transitional zoning district development standards contained within the Official Code of the City of Great Falls.
3. **Engineering Review.** The final engineering drawings and specifications for improvements to the subject property shall be submitted to the City Public Works Department for review and approval.

**Alternatives:**

The Zoning Commission could recommend denial of the zoning map amendment to the City Commission. For this action, the Zoning Commission must provide a separate Basis of Decision for the zoning map amendment request.

**Attachments/Exhibits:**

- Attachment A – Basis of Decision – Zoning Map Amendment
- Attachment B - Aerial Map
- Attachment C - Zoning Map
- Attachment D - Allowable Uses C-2 and M-2
- Attachment E - Application Packet

ATTACHMENT A

**BASIS OF DECISION – ZONING MAP AMENDMENT**

Lot 2 of Riverview Tracts 5<sup>th</sup> Supplement, Section 2, T20N, R3E, P.M.M., Cascade County, Montana

**PRIMARY REVIEW CRITERIA:**

The basis for decision on zoning map amendments is listed in Official Code of the City of Great Falls (OCCGF) §17.16.40.030 of the Land Development Code. The recommendation of the Zoning Commission and the decision of City Commission shall at a minimum consider the following criteria:

**1. The amendment is consistent with and furthers the intent of the City's growth policy.**

The proposed zoning map amendment is consistent with the overall intent and purpose of the City of Great Falls 2013 Growth Policy Update. The request to rezone property from M-2 Mixed-use Transitional to C-2 General Commercial will allow the applicant to utilize the existing vacant site and building. The applicant requests a zoning map amendment to rezone the subject property to C-2 General Commercial to allow for the establishment of a lounge, casino, and off-premise alcohol sales. The land use of a casino is not permitted within the M-2 zoning district, necessitating the request to rezone the property to C-2 which allows a casino as a permitted land use. Staff finds the City's Growth Policy strongly supports the proposed zoning map amendment to facilitate redevelopment upon an infill lot so as to maximize the City's existing infrastructure and services. The zoning map amendment request is consistent with several sections and policies of the Growth Policy including:

Physical Goals and Principles (page 88)

Encourage development in areas that can best accommodate it based on infrastructure, access, and proximity to major employers.

Key Implementation Strategies (page 117)

Encourage the Development of Underutilized or Vacant Lands and Enclaves.

Environmental Policies – Urban Form (page 144)

2.3.1 In order to maximize existing infrastructure, identify underutilized parcels and areas with infill potential as candidates for redevelopment in the City.

Economic Policies – Attract and Retain New Business (page 155)

3.4 Continue efforts to expand, retain and attract new businesses to Great Falls.

Physical Policies - Land Use (page 162)

4.1.1 Promote and incentivize infill development that is compatible with the scale and character of established neighborhoods.

4.1.5 Encourage and incentivize the redevelopment or adaptive reuse of vacant or underutilized properties so as to maximize the City's existing infrastructure.

**ATTACHMENT A**

The proposed zoning map amendment will enable these policies to be addressed and further the implementation of the Growth Policy.

**2. The amendment is consistent with and furthers adopted neighborhood plans, if any.**

Great Falls is separated into nine Neighborhood Councils. There are no adopted Neighborhood Plans for any of the Councils within the City. The subject property is located in Neighborhood Council #3. The applicant's representative presented at the Council's regularly scheduled March 7<sup>TH</sup>, 2024 meeting. The Council voted 2-1 to support the rezone request. Because there is no adopted neighborhood plan adopted for the general area, the amendment is not inconsistent with Criterion #2.

**3. The amendment is consistent with other planning documents adopted by the City Commission, including a river corridor plan, transportation plan, and sub-area plans.**

The subject property is located within the "Primary Impact Area" of The Missouri River Urban Corridor Plan shown on page 15 of the plan. A primary impact area includes lands with strong relationships to the river that are most central to the Corridor Plan. Staff notes the subject property is not immediately fronting the Missouri River, and is located upon a principal arterial street frontage, 3rd Street NW. This area, including the subject property, was an existing commercial site at the time of the Plan's adoption. On page 43, the Plan acknowledges existing commercial properties and states a goal to incorporate existing commercial developments into the new community. In addition, the Plan states commercial development capitalizes on primary street frontage and acts as a buffer, sheltering residential development behind. The Plan also states the lack of growth is the single biggest barrier to success-for the community and the riverfront. As a result, Staff finds consistency between the applicants' request to rezone the property to C-2 to allow for the utilization of an existing vacant commercial site and the Missouri River Urban Corridor Plan.

**4. The code with the amendment is internally consistent.**

The proposed amendment to establish C-2 General Commercial zoning will not be in conflict with any portion of the existing City Code and will be internally consistent. The proposed use of a lounge, casino, and liquor store fits within with the context of the existing commercial corridor based on the surrounding uses surrounding the subject property. The proposal will not be injurious to the use and enjoyment of other property in the immediate vicinity, nor substantially diminish and impair property values in the neighborhood, as the subject properties are existing residential properties.

**5. The amendment is the least restrictive approach to address issues of public health, safety, and welfare.**

There are no existing public health, safety, or welfare issues that have been identified for this property. The zoning assignment will have no impact on these issues.

**ATTACHMENT A**

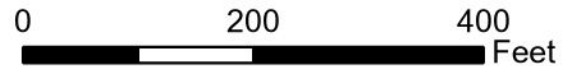
**6. The City has or will have the financial and staffing capability to administer and enforce the amendment.**

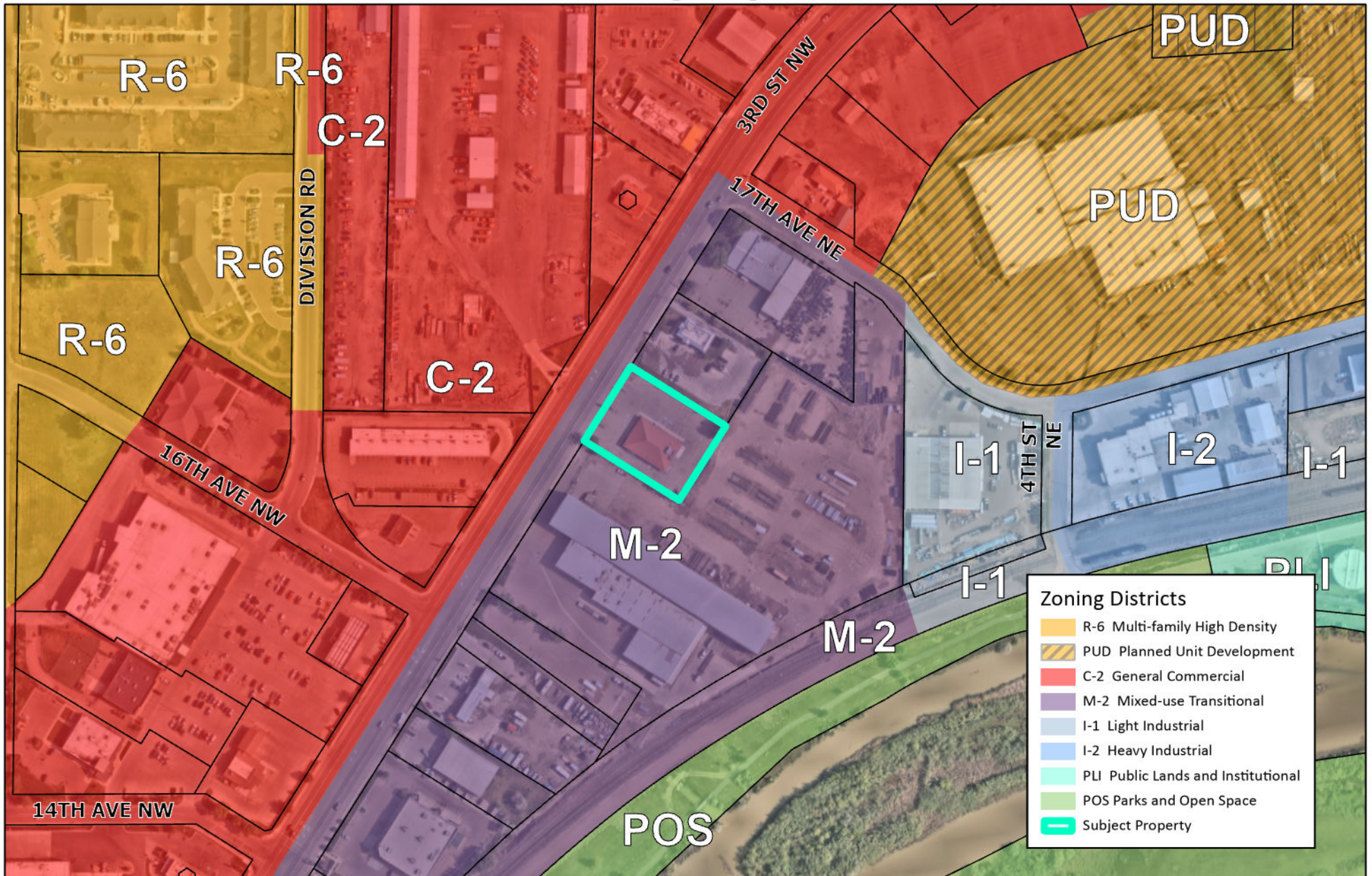
The City has the financial and staffing capability to administer and enforce the amendment if it is approved. The use of the subject property conforms to the proposed zoning, and no public infrastructure needs to be provided to support the new zoning designation on the property.





- Parcels
- Subject Property





 Parcels  
 Subject Property



Title 17 - LAND DEVELOPMENT CODE  
Chapter 20 - LAND USE  
Article 3 ALLOWABLE USES

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### **Article 3 ALLOWABLE USES**

#### **Sections:**

#### **17.20.3.010 Allowable uses within zoning districts.**

For the purposes of this Title, land uses are categorized as principal, accessory, and temporary. The land uses that are allowable in one (1) or more districts are defined in Chapter 8 of this Title. Exhibit 20-1 through 20-3 lists the uses as allowed in one (1) or more base zoning districts. The coding system, as described below, is used to identify the appropriateness of the land uses in each of the various base districts and the type of review if allowed.

"P" indicates that the use is permitted in the district by right, provided that all other provisions of this Title are met. These uses do not undergo public review, but are reviewed at the administrative level to ensure compliance.

"-" indicates that the use is not permitted in the district.

"C" indicates that the use is permitted in the district as a conditional use.

#### **17.20.3.020 Similarity of uses.**

Because the list of uses cannot include every conceivable type of activity, those uses that are listed shall be interpreted to include other uses that are of a similar nature and have similar impacts to the listed use.

#### **17.20.3.030 Uses not listed.**

Those uses not listed, and which cannot be interpreted to be similar to any listed use, as provided for above, shall be prohibited.

#### **17.20.3.040 Project classified in more than one (1) land use category.**

In the event that the proposed project includes more than one (1) land use category, the following rules shall apply:

1. **Prohibited and allowable uses in project.** If a proposed project includes both an allowable use(s) and a prohibited use(s), the prohibited portion of the project may not occur in the district.
2. **More than one (1) review type or development standard in project.** If a proposed project includes more than one (1) use, with different levels of approval, the strictest of the approval procedures shall apply to the whole project.

#### **17.20.3.050 Relationship of a principal use to an accessory use.**

Before an accessory use may be established, the premises shall host a principal use.

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**17.20.3.060 Certain land uses shown as permitted may be a conditional use.**

A permitted land use (as shown in Exhibit 20-1, 20-2, 20-3) that emits air contaminants or potentially offensive odors outside of the building, or that handles radioactive materials, hazardous substances, hazardous waste, or regulated substances shall be considered a conditional use in every circumstance.

**Exhibit 20-1. Principal Uses by District**

Use	C-2	M-2	Special Standards
Agriculture, horticulture, nursery	-	-	17.20.6.005
Marijuana cultivation	-	-	
Mobile home/park	-	-	17.20.6.010
Residence, single-family detached	-	P	
Residence, zero lot line	-	P	17.20.6.020
Residence, two-family	-	P	
Residence, multi-family	P	P	17.20.6.040
Residence, townhouse	-	P	17.20.6.050
Residence, manufactured/factory-built	-	P	17.20.6.060
Retirement home	-	P	
Community residential facility, type I	-	P	
Community residential facility, type II	-	C	
Day care center	P	P	
Emergency shelter	C	C	
Family day care home	-	P	
Group day care home	-	P	
Nursing home	C	P	
Campground	C	-	17.20.6.070
Hotel/motel	P	P	

Micro-brewery	P	C	17.20.6.080
Restaurant	P	P	17.20.6.080
Tavern	P	C	17.20.6.080
Agriculture sales	-	-	
Auction sales	C	-	
Construction materials sales	P	-	
Convenience sales	P	-	
General sales	P	P	
Manufactured housing sales	-	-	
Marijuana dispensary	-	-	
Off-site liquor sales	P	C	
Secondhand sales	P	-	
Shopping center	P	-	
Administrative services	P	P	
Commercial kennel	P	-	17.20.6.090
Financial services	P	P	
Funeral home	P	P	
General services	P	P	
Professional services	P	P	
Sexually-oriented business	-	-	17.20.6.100
Veterinary clinic, large animal	C	-	
Veterinary clinic, small animal	P	P	17.20.6.110
Large equipment rental	C	-	

Small equipment rental	P	-	
General repair	P	-	
Vehicle fuel sales	P	-	
Vehicle repair	P	-	17.20.6.120
Vehicle sales and rental	P	-	
Vehicle services	P	P	
Agricultural commodity storage facility	-	-	
Climate controlled indoor storage	P	P	
Fuel tank farm	-	-	
Marijuana transporter	-	-	
Mini-storage facility	-	C	17.20.6.130
Freight terminal	-	-	
Warehouse	-	C	
Casino	P	-	
Indoor entertainment	P	C	
Indoor sports and recreation	P	C	
Golf course/driving range	-	-	
Miniature golf	P	C	
Outdoor entertainment	-	-	
Park	P	P	
Recreational trail	P	P	
Administrative governmental center	P	P	

Animal shelter	C	C	17.20.6.160
Cemetery	-	-	17.20.6.170
Civic use facility	P	P	
Community center	P	P	
Community cultural facility	P	P	
Community garden	C	P	17.20.6.175
Public safety facility	P	P	
Worship facility	P	P	17.20.6.180
Health care clinic	P	P	
Health care facility	P	C	
Health care sales and services	P	P	
Commercial education facility	P	P	
Educational facility (K–12)	-	C	17.20.6.200
Educational facility (higher education)	C	C	
Instructional facility	P	P	
Composting facility	-	-	17.20.6.210
Recycling center	-	-	17.20.6.220
Solid waste transfer station	-	-	17.20.6.230
Amateur radio station	-	-	17.20.6.240
Telecommunication facility			17.20.6.250
Concealed facility	P	P	
Unconcealed facility	C	C	
Co-located facility	P	C	
Utility installation	C	C	



Airport	-	-	
Bus transit terminal	P	C	
Heli-pad	C	C	17.20.6.260
Parking lot, principal use	P	P	
Parking structure	P	P	
Railroad yard	-	-	
Taxi cab dispatch terminal	P	P	
Contractor yard, type I	C	P	17.20.6.270
Contractor yard, type II	-	C	17.20.6.280
Artisan shop	P	P	
Industrial, heavy	-	-	
Industrial, light	-	-	
Industrial park	-	-	
Junkyard	-	-	17.20.6.290
Light manufacturing and assembly	P	P	17.20.6.300
Marijuana manufacturing	-	-	
Marijuana testing laboratory	-	-	
Motor vehicle graveyard	-	-	17.20.6.310
Motor vehicle wrecking facility	-	-	17.20.6.320

- The use is not permitted in the district
- C The use is allowed through the conditional use process

P The use is permitted in the district by right, consistent with the development standards contained in Article 6 of this chapter, as appropriate ( Ord. 3259 , 2023; Ord. 3251 , 2022; Ord. 3249 , 2022; Ord. 3221 , 2020; Ord. 3166, 2017; Ord. 3087, 2012; Ord. 3068, 2011; Ord. 3056, 2010)

**Exhibit 20-2. Accessory uses by district**

Use	C-2	M-2	Special Standards
Accessory living space	P	P	17.20.7.010
Agriculture, livestock	-	-	17.20.7.080
ATM, exterior	P	P	17.20.7.020
Bed and breakfast	-	P	17.20.7.030
Fences	P	P	17.20.7.040
Gaming, accessory	P	P	17.20.7.050
Garage, private	P	P	17.20.7.060
Home occupation	P	P	17.20.7.070
Private stable/barn	-	-	17.20.7.080
Residence, accessory	P	P	17.20.7.085
Roadside farmer's market	-	-	17.20.7.090
Storage containers	P	-	17.20.7.100
Wind-powered electricity systems	P	P	17.20.7.110

- The use is not permitted in the district
- C The use is allowed in the district through the conditional use process
- P The use is permitted in the district by right, consistent with the development standards contained in Article 7 of this chapter, as appropriate ( Ord. 3251 , 2022; Ord. 3249 , 2022; Ord. 3087, 2012; Ord. 3056, 2010; Ord. 3034, 2009)

**Exhibit 20-3. Temporary uses by district (see 17.20.8.010 for Special Standards)**

Use	C-2	M-2	Special Standards
Garage sales	P	P	17.20.8.015
Itinerant outdoor sales	P	P	17.20.8.020
On-site construction office	P	P	17.20.8.030
On-site real estate sales office	-	P	17.20.8.040
Outdoor entertainment, temporary	P	-	
Sidewalk café	P	P	17.20.8.050
Sidewalk food vendor	P	P	17.20.8.060

- The use is not permitted in the district
- C The use is allowed in the district through the conditional use process
- P The use is permitted in the district by right, consistent with the development standards contained in Article 8 of this chapter, as appropriate ( Ord. 3251 , 2022; Ord. 3249 , 2022; Ord. 3221 , 2020; Ord. 3056, 2010)

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**17.20.3.070 Prohibited land uses.**

No use of land shall be permitted by right or conditionally permitted within the City of Great Falls that is in violation of federal, state or local law, except for land uses relating to activities licensed by the Montana Department of Revenue under the Montana Marijuana Regulation and Taxation Act and identified as allowed in 17.20.3.010 and its accompanying exhibits.

( Ord. 3249 , 2022; Ord. 3054, 2010)

Date Stamp:

CITY OF GREAT FALLS  
PLANNING & COMMUNITY DEVELOPMENT DEPT.  
P.O. BOX 5021, GREAT FALLS, MT, 59403-5021  
406.455.8430 • WWW.GREATFALLSMT.NET

# LAND USE APPLICATION

- Annexation: \$3,000 + \$150/acre
- Preliminary Plat, Major: \$4,000 + \$100/lot
- Final Plat, Major: \$2,000 + \$50/lot
- Minor Subdivision: \$3,000
- Zoning Map Amendment: \$4,000
- Conditional Use Permit: \$3,000
- Planned Unit Development: \$4,000
- Amended Plat, Non-administrative: \$3,000

Name of Project (if applicable):

1525 3rd St NW Great Falls, MT 59404

Project Address:

Town Pump, Inc.

Applicant/Owner Name:

600 S Main St Butte, MT 59702 attn: Dan Sampson

Mailing Address:

406-497-6700

dans@townpump.com

Phone:

Email:

Joe Murphy

Representative Name:

406-727-2185

jmurphy@bigskyce.com

Phone:

Email:

## LEGAL DESCRIPTION:

RIVERVIEW TRACTS NO 5, Lot 002, PLAT 1296 RIVERVIEW TRACTS 5TH

Lot/Block/Subdivision:

S02 / T20N / R03E

Section/Township/Range:

ZONING (ZONING MAP AMENDMENT ONLY):

LAND USE (CONDITIONAL USE ONLY):

M-2 mixed use transit. C-2 general commerci

Current:

Proposed:

Current:

Proposed:

I (We), the undersigned, understand that the filing fee accompanying this application is not refundable. I (We) further understand that the fee pays for the cost of processing, and the fee does not constitute a payment for approval of the application. I (We) further understand that public hearing notice requirements and associated costs for land development projects are my (our) responsibility. I (We) further understand that other fees may be applicable per City Ordinances. I (We) also attest that the above information is true and correct to the best of my (our) knowledge.

Applicant/Owner's Signature:

Date:

Representative's Signature:

Date:

2-14-24

2-14-24



February 14, 2024

Mr. Lonnie Hill, Senior City Planner  
City of Great Falls Planning & Community Development  
P.O. Box 5021  
Great Falls, MT 59403-5021

RE: Zone Change – Former Best Wok, 1525 3<sup>rd</sup> St NW

Dear Mr. Hill,

Transmitted herewith are the following items in support of the proposed zone change:

- Land Use Application executed by owner and representative.
- Exhibit showing the property proposed to be rezoned.
- \$4,000 Check covering the fee for the rezone.

The purpose of the proposed rezone of the property to C-2 is to allow the property to be used as a lounge / casino and to allow the sale of off-premises alcohol; under the current M-2 property zoning, these uses are not allowed.

Please contact me should have *any* questions or concerns or if you need further information.

Sincerely,

Joseph Murphy, P.E.  
Big Sky Civil & Environmental, Inc.

cc: Dan Sampson, Town Pump

encl. (see above)

**bsc&e**  
**BIG SKY CIVIL & ENVIRONMENTAL, INC**

ENGINEERS - PLANNERS - DESIGNERS -  
LAND SURVEYORS - ENVIRONMENTAL SPECIALISTS

1324 13th Ave. SW  
P.O. BOX 3625  
GREAT FALLS, MT 59403  
(406)727-2185 OFFICE  
(406)727-3656 FAX  
www.bigskyce.com

PROFESSIONAL SEAL

BY: CJM  
DATE: 2/15/24

OWNER:

PROJECT NAME:

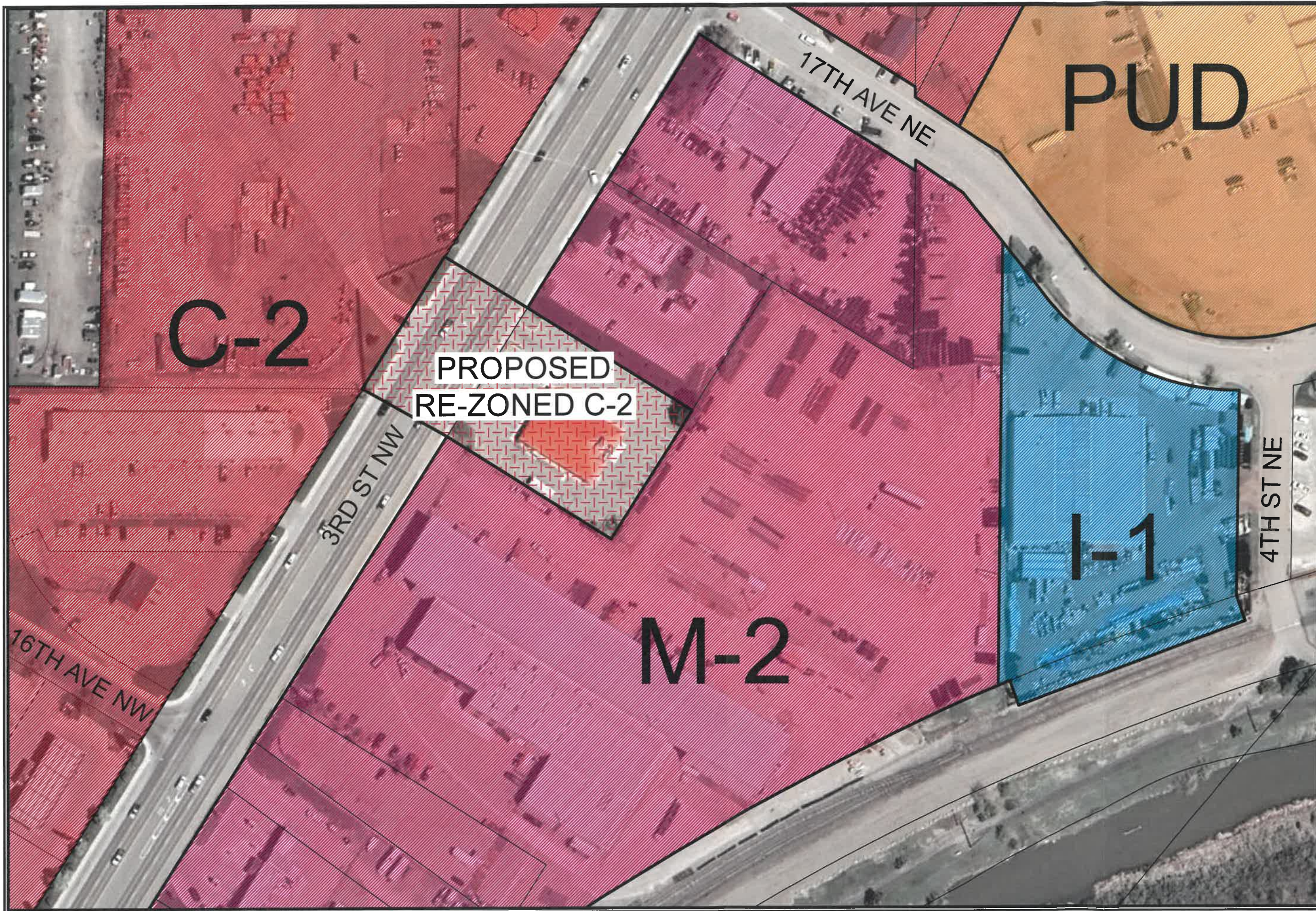
TOWN PUMP  
CASINO

SHEET TITLE:

ZONING MAP

DRAWING INFORMATION:  
OFFICE PROJECT NUMBER: 24B  
OWNER FILE NUMBER: XXXX  
CADD FILE NAME: 24B-CITYMAP  
ASSOCIATED PROJECTS: XXXX

FIGURE:  
FIG. 1





Board Meeting Date: April 9, 2024

**CITY OF GREAT FALLS  
PLANNING ADVISORY BOARD / ZONING COMMISSION AGENDA REPORT**

**Item:** Section 5303 Federal Transit Administration Funding Contracts with the Montana Department of Transportation and the Great Falls Transit District

**Initiated By:** Montana Department of Transportation

**Presented By:** Andrew Finch, Senior Planner

**Action Requested:** Approve funding contracts

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**Suggested Motion:**

1. Board Member moves:

“I move that the Planning Advisory Board approve the Section 5303 Contracts with the Montana Department of Transportation and the Great Falls Transit District.”

2. Chair calls for a second, public comment, Board discussion, and calls for the vote.

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**Overview**

Annually, the Planning Advisory Board enters into contracts with the Montana Department of Transportation (MDT) and the Great Falls Transit District to receive and pass on Federal transit planning funds, referred to as “Section 5303 Contracts” (referencing the source of federal funding). The subject contracts are attached to this report for consideration by the Board.

**Background**

As part of its responsibilities as staff for the Great Falls Metropolitan Planning Organization (MPO), the Planning & Community Development Department annually prepares a Unified Planning Work Program (UPWP) to identify planning-related work activities to be undertaken by the Department and the Great Falls Transit District for the 2024 (current) Federal Fiscal Year (FFY).

The FFY 2024 Unified Planning Work Program (UPWP) identifies work activities to be performed by the Planning & Community Development Department and the Great Falls Transit District, as well as funding sources and the funding levels proposed for each work activity. This includes funding that gets “passed through” from MDT to the Transit District for transit-related planning.

In accordance with the UPWP, the Montana Department of Transportation (MDT) will provide up to \$280,202 in Federal Transit Administration (FTA) Section 5303 funds for local transit planning activities. Because the MPO is the entity that will “receive” the funds, the Planning & Community Development Department will receive and then “pass through” the FTA funds to the Great Falls Transit District for its planning activities. In accordance with the UPWP, the Transit District will use these funds to prepare transit related planning reports, programs and documentation to support its transit operations and to



address Federal transit planning needs and requirements. It will also help fund the update to the District's Transit Development Plan. The non-Federal match of \$70,050 will be provided by the Great Falls Transit District.

To formalize the funding commitments and ensure the recipient (Planning Advisory Board) and sub-recipient (Transit District) adhere to Federal requirements, the Planning Advisory Board is being asked to enter into two Section 5303 Contracts - one between MDT and the Planning Advisory Board, and the other between the Planning Advisory Board and the Transit District. The contracts are attached for Board review and action. If these contracts are approved, City staff will ensure that implementation complies with all requirements.

**Staff Recommendation:**

It is recommended that the Planning Advisory Board approve the Section 5303 Contracts for the current fiscal year.

**Alternatives:**

The Planning Advisory Board could elect to not approve the Contracts, but this would deny the Transit District \$280,202 of Federal funding.

**Attachments:**

- 1) Section 5303 Planning Contract
- 2) Section 5303 Contract for Pass-through of Funds to the Great Falls Transit District

**STATE OF MONTANA**  
**Department of Transportation**

**SECTION 5303 PLANNING CONTRACT**

Agency Name (SUB-RECIPIENT)	Great Falls Planning Board
Agency Address	P.O Box 5021 Great Falls MT 59403-5021
Agency Liaison	Nadine Hanning
UEI Number	MD9MA1227F25
Contract Number	113181
MDT Liaison	Carol Strizich
Performance Period	09/30/2024
Total Eligible Project Cost	\$350,252

**1. PROJECT**

This Contract is entered into by and between Great Falls Planning Board, and the Montana Department of Transportation (MDT, Department, or State), to provide assistance to the SUB-RECIPIENT to evaluate, select and monitor technical study projects and transportation planning projects proposed by local metropolitan planning organizations or public bodies and agencies.

The State having been appropriated grant monies from the Federal Transit Administration (FTA) of \$620,606 for Federal Fiscal Year (FFY) 2023 through 49 USC § 5303 (Section 5303) and desiring to assist SUB-RECIPIENT with a subaward, enters into this Contract with SUB-RECIPIENT. This subaward will be funded through the FTA grant awards to the State, Federal Award Identification Numbers (FAIN) MT-2024-XXX-00 for the use of the FFY 2024 funding. This executed FTA 5303 Planning Grant award is incorporated by reference into this contract. The federal grant award date is TBD. The actual subaward is contingent upon the availability of FTA funding and grant award.

This Agreement is effective during Federal Fiscal Year 2024 (October 1, 2023 - September 30, 2024), for approved expenses incurred during Federal Fiscal Year 2024. This Agreement shall terminate on September 30, 2024, or upon earlier completion of all terms and conditions of this agreement.

The SUB-RECIPIENT shall undertake and complete the Project as described in the SUB-RECIPIENT’s Unified Planning Work Program (UPWP), in accordance with Section 5303 requirements and guidance. The SUB-RECIPIENT shall use its best efforts to complete the Project efficiently and economically.

The total eligible costs of the Project shall be \$350,252. The cost of the Project shall be shared as follows:

80 Percent Federal	\$280,202
20 Percent Local Match	<u>\$ 70,050</u>
Total Project Cost	\$350,252

SUB-RECIPIENT agrees to provide local matching funds to assure payment of project costs. SUB-RECIPIENT shall provide these funds when necessary to meet project costs. SUB-RECIPIENT will not refund or reduce its share of the Project cost unless there is a corresponding proportional grant amount refund to the State. State will make grant payments to SUB-RECIPIENT based upon the State’s receipt and approval of reports and invoices submitted by SUB-RECIPIENT.

The final report is due within 30 days after the end of the Federal Fiscal Year. If reports are not received within this time period, SUB-RECIPIENT agrees payment may be forfeited for that quarter, unless MDT has provided SUB-RECIPIENT with prior written approval for the delay. SUB-RECIPIENT shall advise the State in writing of Project progress at such times and in such manner as the State and FTA may require, but not less than on a quarterly basis.

SUB-RECIPIENT agrees to seek and obtain federal assistance only for eligible costs of the Project as set forth in 2 CFR Part 200 Subpart E and the FTA Master Agreement. The State will make grant payments to SUB-RECIPIENT based upon the State's approval of reports and invoices properly submitted by the SUB-RECIPIENT.

The State must give prior written approval for SUB-RECIPIENT to use any Section 5303 funds to attend courses, workshops, conferences and similar activities. Reimbursement for both in-state and out-of-state travel will be at rates prescribed in Mont. Code Ann 2-18-501, *et seq.*

SUB-RECIPIENT shall submit to the State for prior approval any changes in a work element resulting in a cost increase or decrease over 10%. SUB-RECIPIENT shall indicate the task and amount of the overrun or underrun. SUB-RECIPIENT shall notify the State through quarterly reports of any changes in work elements resulting in a cost increase or decrease of 10% or less. However, the federal share of the overall Section 5303 budget will not be exceeded. The State must authorize any transfer of funds between or among UPWP tasks within the approved budget. SUB-RECIPIENT shall indicate from which tasks federal funding will be transferred to offset the task over expended.

## 2. FEDERAL AWARD IDENTIFICATION

SECTION 2.1. SUB-RECIPIENT Name. [Great Falls Planning Board]

SECTION 2.2. SUB-RECIPIENT'S Unique Entity ID (UEI). [MD9MA1227F25]

SECTION 2.3. Federal Award Identification Number (FAIN). [MT-2024-0XX-00]

SECTION 2.4. Federal Award Date (see the definition of Federal award date in 2 CFR § 200.1) of award to the Recipient by the Federal Agency. [10/01/2023]

SECTION 2.5. Subaward Period of Performance Start and End Date. The Subaward Period of Performance is from October 1, 2023 - September 30, 2024.

SECTION 2.6. Subaward Budget Period Start and End Date. The Subaward Budget Period is from October 1, 2023 - September 30, 2024.

SECTION 2.7. Amount of Federal Funds Obligated by this action by the pass-through entity to SUB-RECIPIENT. [\$280,202]

SECTION 2.8. Total Amount of Federal Funds Obligated to SUB-RECIPIENT by the pass-through entity including the current financial obligation. [\$280,202]

SECTION 2.9. Total Amount of the Federal Award committed to SUB-RECIPIENT by the pass-through entity. [\$280,202]

SECTION 2.10. Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA). Provide operating assistance as described in SUB-RECIPIENT'S Unified Planning Work Program.

SECTION 2.11. Name of Federal awarding agency, Pass-Through entity, and contact information for awarding official of the Pass-Through entity. The FTA is the awarding agency. The MDT is the Pass-Through entity. Carol Strizich, Multimodal Planning Bureau Chief, is the liaison for the Pass-through entity.

SECTION 2.12. Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement. [\$620,606] has been made available under assistance listing number CFDA #20.505, Metropolitan Transportation Planning and State and Non-Metropolitan Planning and Research.

SECTION 2.13. Identification of whether the award is research and development (R&D). This Agreement does not involve research or development.

SECTION 2.14. Indirect cost rate for the Federal award (including if the application of the de minimis rate per 2 CFR 200.414 Indirect Costs (F & A) costs). If SUB-RECIPIENT claims a negotiated Indirect Cost (IDC) rate for reimbursement, the IDC rate must be in accordance with the CFR cited below. A copy of the IDC approval letter from the SUB-RECIPIENT'S federal cognizant agency must be submitted to MDT and approved prior to any reimbursement. If MDT is SUB-RECIPIENT'S primary source of federal funds, then a copy of SUB-RECIPIENT'S indirect cost plan must be submitted to MDT for review and approval. The percentage rate for indirect costs shall be maintained for the life of the project. SUB-RECIPIENT may elect to use the de minimis rate of 10% provided SUB-RECIPIENT meets the requirements set forth in 200.414(f).

2 CFR Part 200.332(a)(4), 200.414 and Appendices III-VIII and Appendix IX to Part 200, 48 CFR Part 31 - Commercial Organization and NPO's FAR.

### 3. General Terms and Conditions

Have the attached Section 5303 Planning General Terms and Conditions (Rev. 02/2024) of this agreement been modified?

Yes  No

The referenced Section 5303 Planning General Terms and Conditions (Rev. 02/2024), including Attachments A, B and C, are attached to this Agreement, and are incorporated into and made an integral part of this Agreement.

SUB-RECIPIENT warrants that it has the lawful authority to enter into this Agreement, and that it has taken all actions and complied with all procedures necessary to execute the authority lawfully in entering into this Agreement, and that the undersigned signatory for SUB-RECIPIENT has been lawfully delegated the authority to sign this Agreement on behalf of SUB-RECIPIENT.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

**STATE OF MONTANA  
DEPARTMENT OF TRANSPORTATION**

**GREAT FALLS PLANNING BOARD**

By: \_\_\_\_\_

By: \_\_\_\_\_

Rob Stapley, Administrator

Printed Name: Dave Bertelsen

MDT-Rail, Transit and Planning Division

Title: Planning Board

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Copy: MDT Office of Civil Rights (DocuSign Notification)

<b>General Terms and Conditions</b>	<b>SECTION 5303 PLANNING</b>
-------------------------------------	------------------------------

**ARTICLE 1. TERMS AND CONDITIONS**

SECTION 1.1 State Program Requirements. SUB-RECIPIENT will comply with all MDT Program requirements related to this Contract including, but not limited to, the Montana State Transit Management Plan (located on MDT's website <https://www.mdt.mt.gov/publications/docs/plans/MONT-ST-MGMT-PLAN.pdf>), the MDT Rail, Transit and Planning Division Title VI Plan, MDT's Language Assistance Plan, the MDT Disadvantaged Business Enterprises (DBE) Program, and the Information Technology Services Architecture Plan. SUB-RECIPIENT further agrees to flow down these requirements to Third Party Participants at all tiers for the Project and related activities.

SECTION 1.2 Default. Nonperformance by SUB-RECIPIENT with any obligation imposed by this Contract, including, but not limited to, noncompliance with federal requirements and guidance, State requirements, or reduction of local project cost funding, will constitute default.

SECTION 1.3 Termination. This Contract may be terminated by the State by serving a notice of termination on SUB-RECIPIENT. Termination may occur for either convenience or default. If termination is for convenience, the notice shall give SUB-RECIPIENT thirty days to wind down its activities under this Contract. If termination occurs due to default, the notice shall state the nature of SUB-RECIPIENT'S default and offer SUB-RECIPIENT an opportunity to explain its nonperformance. If the State finds SUB-RECIPIENT has a reasonable excuse for nonperformance, which is beyond the control of SUB-RECIPIENT, the State may set up a new work schedule and allow the completion of this Contract. Notwithstanding the foregoing, violations of Article 2, Sections 2.3 through 2.7 will result in a default that is subject to immediate disqualification, suspension, or termination of the Contract for cause without the provision of any notice period. In any termination, the State will make its contractual payments proportionate to the work properly performed in accordance with this Contract prior to the date of termination. SUB-RECIPIENT shall account for any Project property in its possession.

SECTION 1.4 Litigation. Controversy arising from this Contract may result in litigation. Arbitration is not available. This Contract shall be governed by Montana law.

SECTION 1.5 Venue. In the event of litigation concerning this Contract, venue shall be in the First Judicial District of the State of Montana, Lewis and Clark County.

SECTION 1.6 Contract Modification. Any change in this Contract will only be by written agreement of the Parties.

SECTION 1.7 Assignment and Subcontracting. SUB-RECIPIENT shall not assign any portion of the work to be performed under this Contract, or execute any contract, amendment or change order thereto, or obligate SUB-RECIPIENT in any manner to any Third Party Participant with respect to SUB-RECIPIENT'S rights and responsibilities under this Contract, without the prior written concurrence of the State.

SECTION 1.8 Subcontracts and Subagreements. SUB-RECIPIENT shall include in all subcontracts and subagreements entered into with Third Party Participants pursuant to this Contract a copy of this Contract, and the subcontract or subagreement will make the provisions of this Contract a specific part of the subcontract or subagreement. In addition, SUB-RECIPIENT and all Third Party Participants shall include the following provisions in any advertisement or invitation to bid for any procurement under this Contract: Sections 1.9 to 2.25 of this Contract. SUB-RECIPIENT is required to report to MDT the Unique Entity ID (UEI) number for any subcontract or subagreement.

SECTION 1.9 Statement of Financial Assistance. This Contract is subject to a financial assistance contract between MDT, the United States Department of Transportation (U.S. DOT), and the FTA.

SECTION 1.10 Indemnification. SUB-RECIPIENT shall protect, indemnify, defend, and hold harmless the State of Montana, MDT, its elected and appointed officials, agents, and employees, while acting within their duties as such, from and against all claims, demands, liabilities, causes of action, and judgments (including costs and attorney fees) arising in favor of or asserted by SUB-RECIPIENT'S employees or third parties on account of damage to property, bodily or personal injury, death, or other damage to persons or entities arising or resulting from acts or omissions of SUB-RECIPIENT, its agents, subcontractors, or other Third Party Participants, under or related to this Contract.

SECTION 1.11 Access and Retention of Records. SUB-RECIPIENT agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine compliance with this Contract. SUB-RECIPIENT agrees to create and retain records supporting this Contract for a period of three years after the completion date of this Contract or the conclusion of any claim, litigation or exception relating to this Contract taken by the State or a third party. SUB-RECIPIENT further agrees to comply with applicable federal record access and retention requirements and guidance for the Project and related activities and to flow down those requirements to Third Party Participants at all tiers.

SECTION 1.12 Notice. All notices arising from the provisions of this Contract shall be in writing and given to the parties at the addresses listed above, either by regular mail or delivery in person.

SECTION 1.13 Agency Assistance. No assistance, other than provided for by this Contract, will be required, but may be provided at the discretion of the State.

SECTION 1.14 Severability and Integration. If any part, or parts, of this Contract are determined to be void, the remaining parts will remain valid and operative. This document, together with its schedules, attachments, exhibits, and other documents incorporated by reference, represent the complete and entire understanding of the parties on its subject matter. No provision, express or implied, arising from any prior oral or written request, bid, inquiry, negotiation, contract, or any other form of communication, shall be a provision of this Contract unless it is reduced to writing, signed by the parties, and attached to this document.

SECTION 1.15 Waivers. A party's failure to enforce any provision of this Contract shall not be construed as a waiver excusing the other party's future performance.

## **ARTICLE 2. FEDERAL REQUIREMENTS**

SECTION 2.1 Applicability of Federal Requirements and Guidance. SUB-RECIPIENT agrees to comply with the provisions of the Underlying Agreement between the FTA and State as well as all applicable federal requirements and guidance governing the Project and related activities as those terms and other terms in this Contract are defined in the current FTA Master Agreement MA(30) (FTA Master Agreement) located at the FTA website: <https://www.transit.dot.gov/funding/grants/grantee-resources/sample-fta->

[agreements/fta-master-agreement-version-30-november-2.](#)

SUB-RECIPIENT

further assures the compliance of its Third Party Participants at all tiers for all such requirements and agrees to flow down the requirements to Third Party Participants at all tiers, for the Project and related activities.

SUB-RECIPIENT understands this Contract includes certain requirements specifically prescribed by Federal law or regulation and does not list all Federal requirements and guidance that may apply to SUB-RECIPIENT, Third Party Participants, or the Project and related activities. The clauses in this Contract have been streamlined to highlight the most prevalent requirements that govern this award, however additional Federal laws, regulations and directives contained in the FTA Master Agreement and FTA Certifications and Assurances (<https://www.transit.dot.gov/sites/fta.dot.gov/files/2023-01/FY23-certifications.pdf>) will also apply to SUB-RECIPIENT and Third Party Participants for the Project and related activities. SUB-RECIPIENT'S signature upon this document acknowledges they have read and understand the FTA Master Agreement and FTA Certifications and Assurances, which are herein incorporated by reference and made a part of this Contract.

The SUB-RECIPIENT further agrees to fully comply with all State requests necessary for the State to meet its obligations to the FTA for the Project and related activities as set forth in the Underlying Agreement between the FTA and State and applicable federal requirements and guidance.

SECTION 2.2 Prohibited Interest. No employee, officer, board member or agent of SUB-RECIPIENT shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (1) The employee, officer, board member or agent;
- (2) Any member of his or her immediate family;
- (3) His or her partner; or
- (4) An organization which employs or is about to employ any of the above; has a financial or other interest in the firm selected for award.

SUB-RECIPIENT'S employees, officers, board members or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of sub-contracts. SUB-RECIPIENT shall establish and maintain written Standards of Conduct covering conflicts of interest as set forth in the FTA Master Agreement.

SECTION 2.3 Ineligible Bidders. Bidders or Suppliers whose names appear on the United States Comptroller General's List of Ineligible Contractors located at <https://www.sam.gov/SAM/> are not eligible for award of, or participation in, any Third Party contract that may be awarded as a result of this Contract. Submission of a bid by any bidder constitutes certification that the bidder or any subcontractor or suppliers to the bidder, on the proposed contract, if one is awarded, are not on the Comptroller General's List of Ineligible Contractors. A subsequent determination by FTA that a bidder knowingly made any misstatement of fact in this regard will be cause for immediate disqualification, suspension, or termination of the Contract for cause.

SECTION 2.4 False or Fraudulent Statements or Claims. SUB-RECIPIENT acknowledges that, should it make a false, fictitious, or fraudulent claim, statement, submission, or certification to the State or Federal Government regarding the Project or related activities, FTA reserves the right to pursue the procedures and impose on SUB-RECIPIENT the penalties of 18 USC 1001, 31 USC Ch. 38, as may be deemed by FTA to be appropriate. A violation in this regard will be cause for immediate disqualification, suspension, or termination of the Contract for cause.

SECTION 2.5 Trafficking in Persons. SUB-RECIPIENT agrees to comply and assures the compliance of



each Third Party Participant, with federal requirements and guidance prohibiting trafficking in persons, including but not limited to the laws set forth in Attachment C, Required Contract Language. If SUB-RECIPIENT is a private entity, SUB-RECIPIENT further agrees that it and its employees that participate in the SUB-RECIPIENT'S Award, may not:

- (1) Engage in severe forms of trafficking in persons during the period of time this Contract is in effect;
- (2) Procure a commercial sex act during the period of time this Contract is in effect; or
- (3) Use or allow the use of forced labor in the performance of this Contract or any Third Party agreement or contract at any tier.

A determination that SUB-RECIPIENT or its employees have engaged in the referenced conduct will be cause for immediate disqualification, suspension, or termination of the Contract for cause.

**SECTION 2.6 Federal Tax Liability and Recent Felony Convictions.** If SUB-RECIPIENT is a private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, SUB-RECIPIENT certifies that it:

- (1) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (2) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

SUB-RECIPIENT agrees to require all Third Party Participants to flow this requirement down to participants at all lower tiers, without regard to the value of any contract or subagreement.

A subsequent determination that SUB-RECIPIENT or Third Party Participant knowingly made any misstatement of fact in this regard will be cause for immediate disqualification, suspension, or termination of the Contract for cause.

**SECTION 2.7 Lobbying.** If SUB-RECIPIENT has applied for a grant exceeding \$100,000, SUB-RECIPIENT certifies, to the best of its knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of SUB-RECIPIENT, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for 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 this Federal contract, grant, loan, or cooperative agreement, SUB-RECIPIENT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) SUB-RECIPIENT shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

SUB-RECIPIENT acknowledges that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

A subsequent determination that SUB-RECIPIENT made any misstatement of fact in this regard will be cause for immediate disqualification, suspension, or termination of the Contract for cause.

SECTION 2.8 Debarment and Suspension. SUB-RECIPIENT shall obtain from its Third Party contractors certifications required by U.S. DOT regulations, "Government-wide Debarment and Suspension (Non-procurement)," 2 CFR Part 180, and otherwise comply with the requirements of those regulations. A list of debarred entities is located at <https://www.sam.gov/SAM/>. SUB-RECIPIENT further agrees to flow down applicable suspension and debarment provisions to all lower tier covered transactions with Third Party Participants.

SECTION 2.9 No Federal or State Obligations to Third Parties. The Federal Government does not and shall not have any commitment or liability related to this Contract or to any Third Party Participant at every tier, or to any other person or entity that is not a party to the Underlying Agreement (FTA or the State). The State shall not be subject to any obligations or liabilities to any Third Party Participant or to any other person or entity that is not a party to the Underlying Agreement regarding the Project or related activities without the specific written consent of the State and FTA. Neither the concurrence in nor the approval of the award of this Contract or any agreement or contract at any tier, or the solicitation thereof, nor any other act performed by the Federal Government or State related to the Project or related activities shall constitute such consent.

SECTION 2.10 Compliance with Non-Discrimination Laws. SUB-RECIPIENT agrees to comply and assures that each Third Party Participant at every tier will comply with all federal and state laws and MDT Programs relative to non-discrimination in Federally and State-assisted programs of the U.S. DOT and the State. SUB-RECIPIENT further agrees to include a covenant in the title of real property acquired for use in the Project that assures nondiscrimination during the useful life of that real property. SUB-RECIPIENT'S signature upon this document acknowledges SUB-RECIPIENT has read and understands Attachment A, MDT Nondiscrimination and Disability Accommodation Notice, which includes a non-exhaustive list of federal and state non-discrimination laws. Attachment A is herein incorporated by reference and made a part of this Contract.

SECTION 2.11 Title VI. SUB-RECIPIENT agrees to prohibit discrimination and assures that each Third Party Participant at every tier will prohibit discrimination relative to Title VI as set forth in federal requirements and guidance, the FTA Master Agreement, and FTA Certifications and Assurances. SUB-RECIPIENT further agrees to comply and assures the compliance of each Third Party Participant at every tier for the Project and related activities with requirements including, but not limited to, all Title VI federal requirements and guidance, Title VI of the Civil Rights Act of 1964, as amended; 42 U.S.C. § 2000d, *et seq.*; U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964;" 49 CFR Part 21; Federal transit law, specifically 49 USC § 5332; the most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients;" the FTA Master Agreement; FTA Certifications and Assurances; and the MDT Rail, Transit and Planning Division Title VI Plan.

SECTION 2.12 Participation by Disadvantaged Business Enterprises.

(1) SUB-RECIPIENT and all Third Party Participants (at every tier) must comply with

- applicable federal and state laws regarding DBEs, including but not limited to 49 CFR Part 26. SUB-RECIPIENT agrees to comply and require all Third Party Participants (at every tier) to comply with all MDT DBE Program requirements. SUB-RECIPIENT agrees to comply with the DBE language in Attachment A and include it in all agreements and contracts with Third Party Participants.
- (2) MDT's agency-wide FTA approved DBE race-neutral goal (DBE goal) is currently 0.7% . SUB-RECIPIENT and all Third Party Participants agree to make a good faith effort to contribute to the meeting of the most current FTA-approved DBE goal set forth on the MDT OCR website.
  - (3) Montana's DBE directory is located at the following website: <https://mdt.mt.gov/business/contracting/civil/dbe.aspx>. SUB-RECIPIENT and Third Party Participants can request quotes from DBE-certified companies by using the on-line form located at the following website: <https://app.mdt.mt.gov/dbeqt>. The information in the online request is transmitted to DBE-certified companies the same day it is submitted by SUB-RECIPIENT or a Third Party Participant. SUB-RECIPIENT agrees to report expenses through MDT's online program quarterly to MDT.
  - (4) SUB-RECIPIENT shall require each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26. SUB-RECIPIENT acknowledges that only those TVMs listed on FTA's certified list of TVMs, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.
  - (5) SUB-RECIPIENT'S failure to comply with the TVM requirements set forth in federal law, the FTA Master Agreement, or MDT's DBE program may result in formal enforcement action or appropriate sanction as determined by the FTA or MDT (e.g., FTA or the State declining to participate in the vehicle procurement).
  - (6) SUB-RECIPIENT must submit to MDT the name of the TVM and the total dollar value of the Third Party contract within 10 days and notify FTA of the same within 30 days. SUB-RECIPIENT agrees to submit additional notifications to MDT and the FTA if options are exercised in subsequent years to ensure that the TVM is still in good standing.

SECTION 2.13 Age Discrimination and ADA. SUB-RECIPIENT agrees to comply and require Third Party Participants at all tiers for the Project and related activities to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, Title 42 USC Chapter 76, Section 6101 *et seq.*, and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age. SUB-RECIPIENT also agrees to comply and require its Third Party Participants at all tiers for the Project and related activities to comply with the requirements of 49 USC 5301(d), 29 USC 794, the Americans with Disabilities Act, as amended (42 USC 12101 *et seq.*), and the Architectural Barriers Act of 1968, as amended (42 USC 4151 *et seq.*), as well as the applicable requirements of the regulations implementing those laws.

SECTION 2.14 Disability Accommodation. MDT is committed to operating all of its programs and services without regard to disability in accordance with all applicable federal and state laws, including Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Civil Rights Restoration Act of 1973, and Title II and III of the Americans with Disabilities Act. MDT does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats or services for effective communications or other disability-related accommodations in the programs and services offered are invited to make their needs and preferences known to the MDT ADA Coordinator. Any person who believes he or she may have been discriminated against on the basis of disability may contact the MDT, Office of Civil Rights, and file a formal complaint.

SECTION 2.15 Employee Protections. SUB-RECIPIENT agrees to comply and assures that each Third Party Participant at every tier will comply with all applicable federal laws, regulations, and

requirements providing protections for employees involved in the Project or related activities with federal assistance provided through the Underlying Agreement including, but not limited to, the following requirements as specifically set forth in the FTA Master Agreement: Prevailing Wage Requirements; Wage and Hour Requirements; Anti-Kickback Prohibitions; and Construction Site Safety Requirements.

SECTION 2.16 Notice to Third Party Participants of Federal Changes. Federal requirements that apply to the State or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the State's Underlying Agreement with the FTA including any information incorporated by reference and made part of that Underlying Agreement. Applicable changes to those federal requirements will apply to each Third Party Agreement and Contract and parties thereto at any tier. SUB-RECIPIENT'S or Third Party Participant's failure to comply with any federal changes shall constitute a material breach of this Contract.

SECTION 2.17 Federal Interest in Project Property. SUB-RECIPIENT agrees that the Federal Government retains a federal interest in all real property, equipment, and supplies acquired or improved for use in connection with a Project (Project Property) until, and to the extent that, the Federal Government removes its interest. SUB-RECIPIENT acknowledges that MDT may require additional instruments, documents or agreements relating to the Federal financial interest in the Project's property. SUB-RECIPIENT agrees to fully comply with all State requests to perfect Federal interests in Project property.

SECTION 2.18 Disputes, Breaches, Defaults, and Litigation.

- (1) FTA Interest. Sub-recipient agrees that FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.
- (2) Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Sub-recipient must promptly notify the FTA Chief Counsel, FTA Regional Counsel for the Region in which the State is located, and the MDT Chief Legal Counsel. The Sub-recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.
  - (a) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
  - (b) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
  - (c) Additional Notice to U.S. DOT Inspector General. The Sub-Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel, Regional Counsel for the Region in which the Recipient is located, and MDT Chief Legal Counsel, if the Sub-recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Sub-recipient and FTA or MDT, or an agreement involving a

principal, officer, employee, agent, or Third Party Participant of the Sub-recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Sub-recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Sub-recipient, including divisions tasked with law enforcement or investigatory functions.

- (3) Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the State’s Underlying Agreement. Notwithstanding the preceding sentence, the State may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the State receives FTA’s prior written concurrence.

SECTION 2.19 Settlement of Disputes with Third Party Participants. FTA has a vested interest in the settlement of disputes, defaults, or breaches involving any federally assisted Project. FTA 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. Therefore, SUB-RECIPIENT shall avail itself of all legal rights available under any agreement or contract with a third party. SUB-RECIPIENT shall notify the State of any current or prospective litigation or major disputed claim pertaining to any third party contract. FTA reserves the right to concur in any compromise or settlement of SUB-RECIPIENT’S claim(s) involving any third party contract, before making Federal assistance available to support that settlement. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the Project account involved unless FTA permits otherwise.

SECTION 2.20 Incorporation of FTA Terms for Third Party Contracting. The preceding provisions include, in part, certain Standard Terms and Conditions required by U.S. DOT for third party agreements and contracts, whether expressly set forth in the preceding Contract provisions. All contractual provisions required by U.S. DOT, including those set forth in FTA Circular 4220.1F, are hereby incorporated into this Contract by reference. All federal requirements, guidance and FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. SUB-RECIPIENT further agrees to flow down such contract language to Third Party Participants at all tiers for all Project agreements and contracts. SUB-RECIPIENT shall not perform any act, fail to perform any act, or refuse to comply with any State requests which would cause the State to be in violation of the FTA terms and conditions.

SUB-RECIPIENT further agrees to ensure agreements and contracts with Third Party Participants at all tiers comply with applicable federal requirements, and follow applicable federal guidance including, but not limited to, the requirements set forth in Attachment C, Required Contract Language.

SECTION 2.21 Compliance with Laws. Some of the clauses contained in this Contract are not governed solely by Federal law but are significantly affected by State law. The laws and regulations cited in this Contract are not all-inclusive of those which may apply to the successful completion of this Contract. SUB-RECIPIENT understands that it is its responsibility to learn which federal, state, and local laws and regulations will apply to its operation under this Contract, and that SUB-RECIPIENT is solely responsible for its lawful compliance with all laws and regulations.

SECTION 2.22 Drug and Alcohol Compliance. SUB-RECIPIENT shall comply with FTA drug and alcohol rules as established in the “Implementation Guidelines for Drug and Alcohol Regulations in

Mass Transit,” set forth in 49 CFR Part 40, and Part 655; Drug-Free Workplace Act. SUB-RECIPIENT further certifies that it and its Third Party Participants at all tiers are compliant with FTA’s regulation for the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, 49 CFR Part 655. SUB-RECIPIENT understands and agrees that failure to comply with this section constitutes default pursuant to Article 2, Section 2.2. Alcohol and Controlled Substance Testing.

SECTION 2.23 Privacy Act. SUB-RECIPIENT 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 USC § 552a. Among other things, SUB-RECIPIENT agrees to obtain the express consent of the Federal Government before SUB-RECIPIENT, or its employees, operate a system of records on behalf of the Federal Government. SUB-RECIPIENT 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.

SECTION 2.24 Coordination. SUB-RECIPIENT of any capital project purchased through this program certifies: (1) the projects selected were derived from a locally developed and coordinated public transit and human services transportation plan; (2) the plan was developed through a process that included representatives of public, private and nonprofit transportation and human services providers as well as the general public; and (3) vehicle use and location is identified in the planning document and will not be altered without the prior written permission of MDT. Should the recipient of any capital project withdraw from the coordinated plan, the ownership of any vehicle purchased under the plan shall revert back to the State or the State will be reimbursed full cost of the capital.

SECTION 2.25 Single Audit. SUB-RECIPIENT may be subject to the audit requirements of 2 CFR 200 Subpart F if the audit threshold in 2 CFR 200.501 of \$750,000 is met. An audit must be conducted in compliance with 2 CFR 200 Subpart F if required. The audit must be completed, and the data collection form and reporting package submitted to the Federal Audit Clearinghouse within the earlier of 30 calendar days after the receipt of the auditor’s report(s) or nine months after the end of the audit period. For local governments and school districts, SUB-RECIPIENT will provide the report to the State of Montana, Department of Administration, Local Government Services Bureau. All other SUB-RECIPIENT such as Tribal Communities and Non-Profit Organizations will provide the report to the State of Montana, Department of Transportation, Audit Services if audit findings are discovered.

If SUB-RECIPIENT fails to submit a single audit within the required timelines, MDT will not reimburse SUB-RECIPIENT for grant expenditures. SUB-RECIPIENT should cease project activity unless SUB-RECIPIENT can incur the expense without reimbursement. In addition, MDT will be unable to enter into future agreements with SUB-RECIPIENT until compliance with this section is completed including any corrective action required is taken.

SECTION 2.26 SUB-RECIPIENT Monitoring. MDT may subject SUB-RECIPIENT to additional sub-recipient monitoring by the MDT Transit Program, at MDT’s discretion, if SUB-RECIPIENT acts or fails to act in any way that increases the risk of SUB-RECIPIENT’S inability to comply with the Contract and/or federal and state grant requirements.

## MDT NONDISCRIMINATION AND DISABILITY ACCOMMODATION NOTICE

Montana Department of Transportation (“MDT”) is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter “protected classes”) by its employees or anyone with whom MDT does business:

### Federal protected classes

Race, color, national origin, sex, sexual orientation, gender identity, age, disability, income-level & Limited English Proficiency

### State protected classes

Race, color, national origin, parental/marital status, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, religion/creed, social origin or condition, genetic information, sex, sexual orientation, gender identification or expression, ancestry, age, disability mental or physical, political or religious affiliations or ideas, military service or veteran status, vaccination status or possession of immunity passport

For the duration of this contract/agreement, the PARTY agrees as follows:

**(1) Compliance with Regulations:** The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

**(2) Non-discrimination:**

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. The PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
  - i. A statement that the PARTY does not discriminate on the grounds of any protected classes.
  - ii. A statement that the PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
  - iii. Contact information for the PARTY’s representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
  - iv. Information on how to request information in alternative accessible formats.

- c. In accordance with Mont. Code Ann. § 49-3-207, the PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that the PARTY does not discriminate on the grounds of any protected class.

**(3) Participation by Disadvantaged Business Enterprises (DBEs):**

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at [mdt.mt.gov/business/contracting/civil/dbe.shtml](http://mdt.mt.gov/business/contracting/civil/dbe.shtml)
- b. By signing this agreement, the PARTY assures MDT that:

*The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.*

- c. The PARTY must include the above assurance in each contract/agreement the PARTY enters.

**(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation, made by the PARTY 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 PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

**(5) Information and Reports:** The PARTY will provide all information and reports required by the Acts, 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 MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, 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 PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**(6) Sanctions for Noncompliance:** In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.



**(7) Pertinent Non-Discrimination Authorities:** During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

*Federal*

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- 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);
- Titles II and III of the Americans with Disabilities Act, which prohibits 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 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination 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;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

*State*

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

**(8) Incorporation of Provisions:** The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.

**SECTION 5303 CONTRACT  
FOR PASS-THROUGH OF FUNDS TO THE  
GREAT FALLS TRANSIT DISTRICT**

THIS Contract is made this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by the GREAT FALLS PLANNING ADVISORY BOARD, P. O. Box 5021, Great Falls, Montana, (Planning Board) and the GREAT FALLS TRANSIT DISTRICT, P. O. Box 2353, Great Falls, Montana (Sub-recipient). Liaison for the Planning Board is the Senior Transportation Planner. Liaison for the Sub-recipient is the General Manager.

This Contract is entered into by and between the PLANNING BOARD and the SUB-RECIPIENT to provide assistance to the SUB-RECIPIENT to evaluate, select and monitor technical study projects and transportation planning projects proposed by local metropolitan planning organizations or public bodies and agencies.

The PLANNING BOARD, having been appropriated grant monies from the Federal Transit Administration (FTA) through agreement with the Montana Department of Transportation (State) of \$620,606 for Federal Fiscal Year (FFY) 2023 through 49 USC § 5303 (Section 5303) and desiring to assist SUB-RECIPIENT with a subaward, enters into this Contract with SUB-RECIPIENT. This subaward will be funded through the FTA grant awards to State for the use of the FFY 2024 funding. This executed FTA 5303 Planning Grant award is incorporated by reference into this contract. The actual subaward is contingent upon the availability of FTA funding and grant award.

This Agreement is effective during Federal Fiscal Year 2024 (October 1, 2023 - September 30, 2024), for approved expenses incurred during Federal Fiscal Year 2024. This Agreement shall terminate on September 30, 2024, or upon earlier completion of all terms and conditions of this agreement.

The SUB-RECIPIENT shall undertake and complete the Project as described in the adopted MPO Unified Planning Work Program (UPWP), in accordance with Section 5303 requirements and guidance. The SUB-RECIPIENT shall use its best efforts to complete the Project efficiently and economically.

The total eligible costs of the Project shall be \$350,252. The cost of the Project shall be shared as follows:

80 Percent Federal	\$280,202
20 Percent Local Match	<u>\$ 70,050</u>
Total Project Cost	\$350,252

SUB-RECIPIENT agrees to provide local matching funds to assure payment of project costs. SUB-RECIPIENT shall provide these funds when necessary to meet project costs. SUB-RECIPIENT will not refund or reduce its share of the Project cost unless there is a corresponding proportional grant amount refund to the State. PLANNING BOARD will make grant payments to

SUB-RECIPIENT based upon the State's receipt and approval of reports and invoices submitted by PLANNING BOARD, after receipt of same from SUB-RECIPIENT. Payment to SUB-RECIPIENT will be made after grant payment from State to PLANNING BOARD.

The final report is due within 30 days after the end of the Federal Fiscal Year. If reports are not received within this time period, SUB-RECIPIENT agrees payment may be forfeited for that quarter, unless State has provided SUB-RECIPIENT with prior written approval for the delay. SUB-RECIPIENT shall advise the PLANNING BOARD and State in writing of Project progress at such times and in such manner as the PLANNING BOARD, State or FTA may require, but not less than on a quarterly basis.

SUB-RECIPIENT agrees to seek and obtain federal assistance only for eligible costs of the Project as set forth in 2 CFR Part 200 Subpart E and the FTA Master Agreement. The State will make grant payments to PLANNING BOARD, who will pass-through payments to SUB-RECIPIENT, based upon the State's approval of reports and invoices properly submitted by the SUB-RECIPIENT.

The State must give prior written approval for SUB-RECIPIENT to use any Section 5303 funds to attend courses, workshops, conferences and similar activities. Reimbursement for both in-state and out-of-state travel will be at rates prescribed in Mont. Code Ann 2-18-501, *et seq.*

SUB-RECIPIENT shall submit to the PLANNING BOARD and State for prior approval any changes in a work element resulting in a cost increase or decrease over 10%. SUB-RECIPIENT shall indicate the task and amount of the overrun or underrun. SUB-RECIPIENT shall notify the PLANNING BOARD and State through quarterly reports of any changes in work elements resulting in a cost increase or decrease of 10% or less. However, the federal share of the overall Section 5303 budget will not be exceeded. The State must authorize any transfer of funds between or among UPWP tasks within the approved budget. SUB-RECIPIENT shall indicate from which tasks federal funding will be transferred to offset the task over expended.

## 1. FEDERAL AWARD IDENTIFICATION

SECTION 1.0. Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA). Provide operating assistance as described in the MPO Unified Planning Work Program.

SECTION 1.01. Name of Federal awarding agency, Pass-Through entity, and contact information for awarding official of the Pass-Through entity. The FTA is the awarding agency. The MDT is the Pass-Through entity to PLANNING BOARD. Carol Strizich, Multimodal Planning Bureau Chief, is the liaison for the MDT.

SECTION 1.02. Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement. [\$620,606] has been made available under assistance listing number CFDA #20.505,

Metropolitan Transportation Planning and State and Non-Metropolitan Planning and Research.

SECTION 1.03. Identification of whether the award is research and development (R&D). This Agreement does not involve research or development.

SECTION 1.04. Indirect cost rate for the Federal award (including if the application of the de minimis rate per 2 CFR 200.414 Indirect Costs (F & A) costs). If SUB-RECIPIENT claims a negotiated Indirect Cost (IDC) rate for reimbursement, the IDC rate must be in accordance with the CFR cited below. A copy of the IDC approval letter from the SUB-RECIPIENT'S federal cognizant agency must be submitted to MDT and approved prior to any reimbursement. If MDT is SUB-RECIPIENT'S primary source of federal funds, then a copy of SUB-RECIPIENT'S indirect cost plan must be submitted to MDT for review and approval. The percentage rate for indirect costs shall be maintained for the life of the project. SUB-RECIPIENT may elect to use the de minimis rate of 10% provided SUB-RECIPIENT meets the requirements set forth in 200.414(f).

2 CFR Part 200.332(a)(4), 200.414 and Appendices III-VIII and Appendix IX to Part 200, 48 CFR Part 31 - Commercial Organization and NPO's FAR.

**2. General Terms and Conditions**

Have the attached Section 5303 Planning General Terms and Conditions (Rev. 02/2024) of this agreement been modified?

Yes  No

The referenced Section 5303 Planning General Terms and Conditions (Rev. 02/2024), including Attachments A, B and C, are attached to this Agreement, and are incorporated into and made an integral part of this Agreement.

SUB-RECIPIENT warrants that it has the lawful authority to enter into this Agreement, and that it has taken all actions and complied with all procedures necessary to execute the authority lawfully in entering into this Agreement, and that the undersigned signatory for SUB-RECIPIENT has been lawfully delegated the authority to sign this Agreement on behalf of SUB-RECIPIENT.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed.

Name: Great Falls Transit District

By: \_\_\_\_\_

Title: General Manager

Date: \_\_\_\_\_

Name: Great Falls Planning Advisory Board

By: \_\_\_\_\_

Title: Chairperson

Date: \_\_\_\_\_

<b>General Terms and Conditions</b>	<b>SECTION 5303 PLANNING</b>
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**ARTICLE 1. TERMS AND CONDITIONS**

SECTION 1.1 State Program Requirements. SUB-RECIPIENT will comply with all MDT Program requirements related to this Contract including, but not limited to, the Montana State Transit Management Plan (located on MDT's website <https://www.mdt.mt.gov/publications/docs/plans/MONT-ST-MGMT-PLAN.pdf>), the MDT Rail, Transit and Planning Division Title VI Plan, MDT's Language Assistance Plan, the MDT Disadvantaged Business Enterprises (DBE) Program, and the Information Technology Services Architecture Plan. SUB-RECIPIENT further agrees to flow down these requirements to Third Party Participants at all tiers for the Project and related activities.

SECTION 1.2 Default. Nonperformance by SUB-RECIPIENT with any obligation imposed by this Contract, including, but not limited to, noncompliance with federal requirements and guidance, State requirements, or reduction of local project cost funding, will constitute default.

SECTION 1.3 Termination. This Contract may be terminated by the State by serving a notice of termination on SUB-RECIPIENT. Termination may occur for either convenience or default. If termination is for convenience, the notice shall give SUB-RECIPIENT thirty days to wind down its activities under this Contract. If termination occurs due to default, the notice shall state the nature of SUB-RECIPIENT'S default and offer SUB-RECIPIENT an opportunity to explain its nonperformance. If the State finds SUB-RECIPIENT has a reasonable excuse for nonperformance, which is beyond the control of SUB-RECIPIENT, the State may set up a new work schedule and allow the completion of this Contract. Notwithstanding the foregoing, violations of Article 2, Sections 2.3 through 2.7 will result in a default that is subject to immediate disqualification, suspension, or termination of the Contract for cause without the provision of any notice period. In any termination, the State will make its contractual payments proportionate to the work properly performed in accordance with this Contract prior to the date of termination. SUB-RECIPIENT shall account for any Project property in its possession.

SECTION 1.4 Litigation. Controversy arising from this Contract may result in litigation. Arbitration is not available. This Contract shall be governed by Montana law.

SECTION 1.5 Venue. In the event of litigation concerning this Contract, venue shall be in the First Judicial District of the State of Montana, Lewis and Clark County.

SECTION 1.6 Contract Modification. Any change in this Contract will only be by written agreement of the Parties.

SECTION 1.7 Assignment and Subcontracting. SUB-RECIPIENT shall not assign any portion of the work to be performed under this Contract, or execute any contract, amendment or change order thereto, or obligate SUB-RECIPIENT in any manner to any Third Party Participant with respect to SUB-RECIPIENT'S rights and responsibilities under this Contract, without the prior written concurrence of the State.

SECTION 1.8 Subcontracts and Subagreements. SUB-RECIPIENT shall include in all subcontracts and subagreements entered into with Third Party Participants pursuant to this Contract a copy of this Contract, and the subcontract or subagreement will make the provisions of this Contract a specific part of the subcontract or subagreement. In addition, SUB-RECIPIENT and all Third Party Participants shall include the following provisions in any advertisement or invitation to bid for any procurement under this Contract: Sections 1.9 to 2.25 of this Contract. SUB-RECIPIENT is required to report to MDT the Unique Entity ID (UEI) number for any subcontract or subagreement.

SECTION 1.9 Statement of Financial Assistance. This Contract is subject to a financial assistance contract between MDT, the United States Department of Transportation (U.S. DOT), and the FTA.

SECTION 1.10 Indemnification. SUB-RECIPIENT shall protect, indemnify, defend, and hold harmless the State of Montana, MDT, its elected and appointed officials, agents, and employees, while acting within their duties as such, from and against all claims, demands, liabilities, causes of action, and judgments (including costs and attorney fees) arising in favor of or asserted by SUB-RECIPIENT'S employees or third parties on account of damage to property, bodily or personal injury, death, or other damage to persons or entities arising or resulting from acts or omissions of SUB-RECIPIENT, its agents, subcontractors, or other Third Party Participants, under or related to this Contract.

SECTION 1.11 Access and Retention of Records. SUB-RECIPIENT agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine compliance with this Contract. SUB-RECIPIENT agrees to create and retain records supporting this Contract for a period of three years after the completion date of this Contract or the conclusion of any claim, litigation or exception relating to this Contract taken by the State or a third party. SUB-RECIPIENT further agrees to comply with applicable federal record access and retention requirements and guidance for the Project and related activities and to flow down those requirements to Third Party Participants at all tiers.

SECTION 1.12 Notice. All notices arising from the provisions of this Contract shall be in writing and given to the parties at the addresses listed above, either by regular mail or delivery in person.

SECTION 1.13 Agency Assistance. No assistance, other than provided for by this Contract, will be required, but may be provided at the discretion of the State.

SECTION 1.14 Severability and Integration. If any part, or parts, of this Contract are determined to be void, the remaining parts will remain valid and operative. This document, together with its schedules, attachments, exhibits, and other documents incorporated by reference, represent the complete and entire understanding of the parties on its subject matter. No provision, express or implied, arising from any prior oral or written request, bid, inquiry, negotiation, contract, or any other form of communication, shall be a provision of this Contract unless it is reduced to writing, signed by the parties, and attached to this document.

SECTION 1.15 Waivers. A party's failure to enforce any provision of this Contract shall not be construed as a waiver excusing the other party's future performance.

## **ARTICLE 2. FEDERAL REQUIREMENTS**

SECTION 2.1 Applicability of Federal Requirements and Guidance. SUB-RECIPIENT agrees to comply with the provisions of the Underlying Agreement between the FTA and State as well as all applicable federal requirements and guidance governing the Project and related activities as those terms and other terms in this Contract are defined in the current FTA Master Agreement MA(30) (FTA Master Agreement) located at the FTA website: <https://www.transit.dot.gov/funding/grants/grantee-resources/sample-fta->



[agreements/fta-master-agreement-version-30-november-2.](#)

SUB-RECIPIENT

further assures the compliance of its Third Party Participants at all tiers for all such requirements and agrees to flow down the requirements to Third Party Participants at all tiers, for the Project and related activities.

SUB-RECIPIENT understands this Contract includes certain requirements specifically prescribed by Federal law or regulation and does not list all Federal requirements and guidance that may apply to SUB-RECIPIENT, Third Party Participants, or the Project and related activities. The clauses in this Contract have been streamlined to highlight the most prevalent requirements that govern this award, however additional Federal laws, regulations and directives contained in the FTA Master Agreement and FTA Certifications and Assurances (<https://www.transit.dot.gov/sites/fta.dot.gov/files/2023-01/FY23-certifications.pdf>) will also apply to SUB-RECIPIENT and Third Party Participants for the Project and related activities. SUB-RECIPIENT'S signature upon this document acknowledges they have read and understand the FTA Master Agreement and FTA Certifications and Assurances, which are herein incorporated by reference and made a part of this Contract.

The SUB-RECIPIENT further agrees to fully comply with all State requests necessary for the State to meet its obligations to the FTA for the Project and related activities as set forth in the Underlying Agreement between the FTA and State and applicable federal requirements and guidance.

**SECTION 2.2 Prohibited Interest.** No employee, officer, board member or agent of SUB-RECIPIENT shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (1) The employee, officer, board member or agent;
- (2) Any member of his or her immediate family;
- (3) His or her partner; or
- (4) An organization which employs or is about to employ any of the above; has a financial or other interest in the firm selected for award.

SUB-RECIPIENT'S employees, officers, board members or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of sub-contracts. SUB-RECIPIENT shall establish and maintain written Standards of Conduct covering conflicts of interest as set forth in the FTA Master Agreement.

**SECTION 2.3 Ineligible Bidders.** Bidders or Suppliers whose names appear on the United States Comptroller General's List of Ineligible Contractors located at <https://www.sam.gov/SAM/> are not eligible for award of, or participation in, any Third Party contract that may be awarded as a result of this Contract. Submission of a bid by any bidder constitutes certification that the bidder or any subcontractor or suppliers to the bidder, on the proposed contract, if one is awarded, are not on the Comptroller General's List of Ineligible Contractors. A subsequent determination by FTA that a bidder knowingly made any misstatement of fact in this regard will be cause for immediate disqualification, suspension, or termination of the Contract for cause.

**SECTION 2.4 False or Fraudulent Statements or Claims.** SUB-RECIPIENT acknowledges that, should it make a false, fictitious, or fraudulent claim, statement, submission, or certification to the State or Federal Government regarding the Project or related activities, FTA reserves the right to pursue the procedures and impose on SUB-RECIPIENT the penalties of 18 USC 1001, 31 USC Ch. 38, as may be deemed by FTA to be appropriate. A violation in this regard will be cause for immediate disqualification, suspension, or termination of the Contract for cause.

**SECTION 2.5 Trafficking in Persons.** SUB-RECIPIENT agrees to comply and assures the compliance of

each Third Party Participant, with federal requirements and guidance prohibiting trafficking in persons, including but not limited to the laws set forth in Attachment C, Required Contract Language. If SUB-RECIPIENT is a private entity, SUB-RECIPIENT further agrees that it and its employees that participate in the SUB-RECIPIENT'S Award, may not:

- (1) Engage in severe forms of trafficking in persons during the period of time this Contract is in effect;
- (2) Procure a commercial sex act during the period of time this Contract is in effect; or
- (3) Use or allow the use of forced labor in the performance of this Contract or any Third Party agreement or contract at any tier.

A determination that SUB-RECIPIENT or its employees have engaged in the referenced conduct will be cause for immediate disqualification, suspension, or termination of the Contract for cause.

**SECTION 2.6 Federal Tax Liability and Recent Felony Convictions.** If SUB-RECIPIENT is a private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, SUB-RECIPIENT certifies that it:

- (1) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (2) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

SUB-RECIPIENT agrees to require all Third Party Participants to flow this requirement down to participants at all lower tiers, without regard to the value of any contract or subagreement.

A subsequent determination that SUB-RECIPIENT or Third Party Participant knowingly made any misstatement of fact in this regard will be cause for immediate disqualification, suspension, or termination of the Contract for cause.

**SECTION 2.7 Lobbying.** If SUB-RECIPIENT has applied for a grant exceeding \$100,000, SUB-RECIPIENT certifies, to the best of its knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of SUB-RECIPIENT, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for 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 this Federal contract, grant, loan, or cooperative agreement, SUB-RECIPIENT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) SUB-RECIPIENT shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

SUB-RECIPIENT acknowledges that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

A subsequent determination that SUB-RECIPIENT made any misstatement of fact in this regard will be cause for immediate disqualification, suspension, or termination of the Contract for cause.

SECTION 2.8 Debarment and Suspension. SUB-RECIPIENT shall obtain from its Third Party contractors certifications required by U.S. DOT regulations, "Government-wide Debarment and Suspension (Non-procurement)," 2 CFR Part 180, and otherwise comply with the requirements of those regulations. A list of debarred entities is located at <https://www.sam.gov/SAM/>. SUB-RECIPIENT further agrees to flow down applicable suspension and debarment provisions to all lower tier covered transactions with Third Party Participants.

SECTION 2.9 No Federal or State Obligations to Third Parties. The Federal Government does not and shall not have any commitment or liability related to this Contract or to any Third Party Participant at every tier, or to any other person or entity that is not a party to the Underlying Agreement (FTA or the State). The State shall not be subject to any obligations or liabilities to any Third Party Participant or to any other person or entity that is not a party to the Underlying Agreement regarding the Project or related activities without the specific written consent of the State and FTA. Neither the concurrence in nor the approval of the award of this Contract or any agreement or contract at any tier, or the solicitation thereof, nor any other act performed by the Federal Government or State related to the Project or related activities shall constitute such consent.

SECTION 2.10 Compliance with Non-Discrimination Laws. SUB-RECIPIENT agrees to comply and assures that each Third Party Participant at every tier will comply with all federal and state laws and MDT Programs relative to non-discrimination in Federally and State-assisted programs of the U.S. DOT and the State. SUB-RECIPIENT further agrees to include a covenant in the title of real property acquired for use in the Project that assures nondiscrimination during the useful life of that real property. SUB-RECIPIENT'S signature upon this document acknowledges SUB-RECIPIENT has read and understands Attachment A, MDT Nondiscrimination and Disability Accommodation Notice, which includes a non-exhaustive list of federal and state non-discrimination laws. Attachment A is herein incorporated by reference and made a part of this Contract.

SECTION 2.11 Title VI. SUB-RECIPIENT agrees to prohibit discrimination and assures that each Third Party Participant at every tier will prohibit discrimination relative to Title VI as set forth in federal requirements and guidance, the FTA Master Agreement, and FTA Certifications and Assurances. SUB-RECIPIENT further agrees to comply and assures the compliance of each Third Party Participant at every tier for the Project and related activities with requirements including, but not limited to, all Title VI federal requirements and guidance, Title VI of the Civil Rights Act of 1964, as amended; 42 U.S.C. § 2000d, *et seq.*; U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964;" 49 CFR Part 21; Federal transit law, specifically 49 USC § 5332; the most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients;" the FTA Master Agreement; FTA Certifications and Assurances; and the MDT Rail, Transit and Planning Division Title VI Plan.

SECTION 2.12 Participation by Disadvantaged Business Enterprises.

(1) SUB-RECIPIENT and all Third Party Participants (at every tier) must comply with

- applicable federal and state laws regarding DBEs, including but not limited to 49 CFR Part 26. SUB-RECIPIENT agrees to comply and require all Third Party Participants (at every tier) to comply with all MDT DBE Program requirements. SUB-RECIPIENT agrees to comply with the DBE language in Attachment A and include it in all agreements and contracts with Third Party Participants.
- (2) MDT's agency-wide FTA approved DBE race-neutral goal (DBE goal) is currently 0.7% . SUB-RECIPIENT and all Third Party Participants agree to make a good faith effort to contribute to the meeting of the most current FTA-approved DBE goal set forth on the MDT OCR website.
  - (3) Montana's DBE directory is located at the following website: <https://mdt.mt.gov/business/contracting/civil/dbe.aspx>. SUB-RECIPIENT and Third Party Participants can request quotes from DBE-certified companies by using the on-line form located at the following website: <https://app.mdt.mt.gov/dbeqt>. The information in the online request is transmitted to DBE-certified companies the same day it is submitted by SUB-RECIPIENT or a Third Party Participant. SUB-RECIPIENT agrees to report expenses through MDT's online program quarterly to MDT.
  - (4) SUB-RECIPIENT shall require each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26. SUB-RECIPIENT acknowledges that only those TVMs listed on FTA's certified list of TVMs, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.
  - (5) SUB-RECIPIENT'S failure to comply with the TVM requirements set forth in federal law, the FTA Master Agreement, or MDT's DBE program may result in formal enforcement action or appropriate sanction as determined by the FTA or MDT (e.g., FTA or the State declining to participate in the vehicle procurement).
  - (6) SUB-RECIPIENT must submit to MDT the name of the TVM and the total dollar value of the Third Party contract within 10 days and notify FTA of the same within 30 days. SUB-RECIPIENT agrees to submit additional notifications to MDT and the FTA if options are exercised in subsequent years to ensure that the TVM is still in good standing.

SECTION 2.13 Age Discrimination and ADA. SUB-RECIPIENT agrees to comply and require Third Party Participants at all tiers for the Project and related activities to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, Title 42 USC Chapter 76, Section 6101 *et seq.*, and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age. SUB-RECIPIENT also agrees to comply and require its Third Party Participants at all tiers for the Project and related activities to comply with the requirements of 49 USC 5301(d), 29 USC 794, the Americans with Disabilities Act, as amended (42 USC 12101 *et seq.*), and the Architectural Barriers Act of 1968, as amended (42 USC 4151 *et seq.*), as well as the applicable requirements of the regulations implementing those laws.

SECTION 2.14 Disability Accommodation. MDT is committed to operating all of its programs and services without regard to disability in accordance with all applicable federal and state laws, including Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Civil Rights Restoration Act of 1973, and Title II and III of the Americans with Disabilities Act. MDT does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats or services for effective communications or other disability-related accommodations in the programs and services offered are invited to make their needs and preferences known to the MDT ADA Coordinator. Any person who believes he or she may have been discriminated against on the basis of disability may contact the MDT, Office of Civil Rights, and file a formal complaint.

SECTION 2.15 Employee Protections. SUB-RECIPIENT agrees to comply and assures that each Third Party Participant at every tier will comply with all applicable federal laws, regulations, and

requirements providing protections for employees involved in the Project or related activities with federal assistance provided through the Underlying Agreement including, but not limited to, the following requirements as specifically set forth in the FTA Master Agreement: Prevailing Wage Requirements; Wage and Hour Requirements; Anti-Kickback Prohibitions; and Construction Site Safety Requirements.

**SECTION 2.16 Notice to Third Party Participants of Federal Changes.** Federal requirements that apply to the State or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the State's Underlying Agreement with the FTA including any information incorporated by reference and made part of that Underlying Agreement. Applicable changes to those federal requirements will apply to each Third Party Agreement and Contract and parties thereto at any tier. SUB-RECIPIENT'S or Third Party Participant's failure to comply with any federal changes shall constitute a material breach of this Contract.

**SECTION 2.17 Federal Interest in Project Property.** SUB-RECIPIENT agrees that the Federal Government retains a federal interest in all real property, equipment, and supplies acquired or improved for use in connection with a Project (Project Property) until, and to the extent that, the Federal Government removes its interest. SUB-RECIPIENT acknowledges that MDT may require additional instruments, documents or agreements relating to the Federal financial interest in the Project's property. SUB-RECIPIENT agrees to fully comply with all State requests to perfect Federal interests in Project property.

**SECTION 2.18 Disputes, Breaches, Defaults, and Litigation.**

- (1) FTA Interest. Sub-recipient agrees that FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.
- (2) Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Sub-recipient must promptly notify the FTA Chief Counsel, FTA Regional Counsel for the Region in which the State is located, and the MDT Chief Legal Counsel. The Sub-recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.
  - (a) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
  - (b) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
  - (c) Additional Notice to U.S. DOT Inspector General. The Sub-Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel, Regional Counsel for the Region in which the Recipient is located, and MDT Chief Legal Counsel, if the Sub-recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Sub-recipient and FTA or MDT, or an agreement involving a

principal, officer, employee, agent, or Third Party Participant of the Sub-recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Sub-recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Sub-recipient, including divisions tasked with law enforcement or investigatory functions.

- (3) Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the State’s Underlying Agreement. Notwithstanding the preceding sentence, the State may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the State receives FTA’s prior written concurrence.

**SECTION 2.19 Settlement of Disputes with Third Party Participants.** FTA has a vested interest in the settlement of disputes, defaults, or breaches involving any federally assisted Project. FTA 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. Therefore, SUB-RECIPIENT shall avail itself of all legal rights available under any agreement or contract with a third party. SUB-RECIPIENT shall notify the State of any current or prospective litigation or major disputed claim pertaining to any third party contract. FTA reserves the right to concur in any compromise or settlement of SUB-RECIPIENT’S claim(s) involving any third party contract, before making Federal assistance available to support that settlement. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the Project account involved unless FTA permits otherwise.

**SECTION 2.20 Incorporation of FTA Terms for Third Party Contracting.** The preceding provisions include, in part, certain Standard Terms and Conditions required by U.S. DOT for third party agreements and contracts, whether expressly set forth in the preceding Contract provisions. All contractual provisions required by U.S. DOT, including those set forth in FTA Circular 4220.1F, are hereby incorporated into this Contract by reference. All federal requirements, guidance and FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. SUB-RECIPIENT further agrees to flow down such contract language to Third Party Participants at all tiers for all Project agreements and contracts. SUB-RECIPIENT shall not perform any act, fail to perform any act, or refuse to comply with any State requests which would cause the State to be in violation of the FTA terms and conditions.

SUB-RECIPIENT further agrees to ensure agreements and contracts with Third Party Participants at all tiers comply with applicable federal requirements, and follow applicable federal guidance including, but not limited to, the requirements set forth in Attachment C, Required Contract Language.

**SECTION 2.21 Compliance with Laws.** Some of the clauses contained in this Contract are not governed solely by Federal law but are significantly affected by State law. The laws and regulations cited in this Contract are not all-inclusive of those which may apply to the successful completion of this Contract. SUB-RECIPIENT understands that it is its responsibility to learn which federal, state, and local laws and regulations will apply to its operation under this Contract, and that SUB-RECIPIENT is solely responsible for its lawful compliance with all laws and regulations.

**SECTION 2.22 Drug and Alcohol Compliance.** SUB-RECIPIENT shall comply with FTA drug and alcohol rules as established in the “Implementation Guidelines for Drug and Alcohol Regulations in

Mass Transit,” set forth in 49 CFR Part 40, and Part 655; Drug-Free Workplace Act. SUB-RECIPIENT further certifies that it and its Third Party Participants at all tiers are compliant with FTA’s regulation for the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, 49 CFR Part 655. SUB-RECIPIENT understands and agrees that failure to comply with this section constitutes default pursuant to Article 2, Section 2.2. Alcohol and Controlled Substance Testing.

SECTION 2.23 Privacy Act. SUB-RECIPIENT 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 USC § 552a. Among other things, SUB-RECIPIENT agrees to obtain the express consent of the Federal Government before SUB-RECIPIENT, or its employees, operate a system of records on behalf of the Federal Government. SUB-RECIPIENT 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.

SECTION 2.24 Coordination. SUB-RECIPIENT of any capital project purchased through this program certifies: (1) the projects selected were derived from a locally developed and coordinated public transit and human services transportation plan; (2) the plan was developed through a process that included representatives of public, private and nonprofit transportation and human services providers as well as the general public; and (3) vehicle use and location is identified in the planning document and will not be altered without the prior written permission of MDT. Should the recipient of any capital project withdraw from the coordinated plan, the ownership of any vehicle purchased under the plan shall revert back to the State or the State will be reimbursed full cost of the capital.

SECTION 2.25 Single Audit. SUB-RECIPIENT may be subject to the audit requirements of 2 CFR 200 Subpart F if the audit threshold in 2 CFR 200.501 of \$750,000 is met. An audit must be conducted in compliance with 2 CFR 200 Subpart F if required. The audit must be completed, and the data collection form and reporting package submitted to the Federal Audit Clearinghouse within the earlier of 30 calendar days after the receipt of the auditor’s report(s) or nine months after the end of the audit period. For local governments and school districts, SUB-RECIPIENT will provide the report to the State of Montana, Department of Administration, Local Government Services Bureau. All other SUB-RECIPIENT such as Tribal Communities and Non-Profit Organizations will provide the report to the State of Montana, Department of Transportation, Audit Services if audit findings are discovered.

If SUB-RECIPIENT fails to submit a single audit within the required timelines, MDT will not reimburse SUB-RECIPIENT for grant expenditures. SUB-RECIPIENT should cease project activity unless SUB-RECIPIENT can incur the expense without reimbursement. In addition, MDT will be unable to enter into future agreements with SUB-RECIPIENT until compliance with this section is completed including any corrective action required is taken.

SECTION 2.26 SUB-RECIPIENT Monitoring. MDT may subject SUB-RECIPIENT to additional sub-recipient monitoring by the MDT Transit Program, at MDT’s discretion, if SUB-RECIPIENT acts or fails to act in any way that increases the risk of SUB-RECIPIENT’S inability to comply with the Contract and/or federal and state grant requirements.

## MDT NONDISCRIMINATION AND DISABILITY ACCOMMODATION NOTICE

Montana Department of Transportation (“MDT”) is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter “protected classes”) by its employees or anyone with whom MDT does business:

### Federal protected classes

Race, color, national origin, sex, sexual orientation, gender identity, age, disability, income-level & Limited English Proficiency

### State protected classes

Race, color, national origin, parental/marital status, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, religion/creed, social origin or condition, genetic information, sex, sexual orientation, gender identification or expression, ancestry, age, disability mental or physical, political or religious affiliations or ideas, military service or veteran status, vaccination status or possession of immunity passport

For the duration of this contract/agreement, the PARTY agrees as follows:

**(1) Compliance with Regulations:** The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

**(2) Non-discrimination:**

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. The PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
  - i. A statement that the PARTY does not discriminate on the grounds of any protected classes.
  - ii. A statement that the PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
  - iii. Contact information for the PARTY’s representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
  - iv. Information on how to request information in alternative accessible formats.



- c. In accordance with Mont. Code Ann. § 49-3-207, the PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that the PARTY does not discriminate on the grounds of any protected class.

**(3) Participation by Disadvantaged Business Enterprises (DBEs):**

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at [mdt.mt.gov/business/contracting/civil/dbe.shtml](http://mdt.mt.gov/business/contracting/civil/dbe.shtml)
- b. By signing this agreement, the PARTY assures MDT that:

*The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.*

- c. The PARTY must include the above assurance in each contract/agreement the PARTY enters.

**(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation, made by the PARTY 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 PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

**(5) Information and Reports:** The PARTY will provide all information and reports required by the Acts, 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 MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, 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 PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**(6) Sanctions for Noncompliance:** In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

**(7) Pertinent Non-Discrimination Authorities:** During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

*Federal*

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- 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);
- Titles II and III of the Americans with Disabilities Act, which prohibits 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 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination 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;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

*State*

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

**(8) Incorporation of Provisions:** The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.