



**Item:** 2011 Funding Agreement with the Montana Department of Transportation for Air Quality Equipment

**From:** Tom Hugg, Vehicle Maintenance Supervisor

**Initiated By:** Public Works Department

**Presented By:** Jim Rearden, Public Works Director

**Action Requested:** Award Agreement

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**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (approve/reject) the attached Funding Agreement for 2011 Air Quality Equipment with the Montana Department of Transportation.

2. Mayor calls for a second, discussion, inquiries from the public, and calls for the vote.

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**Staff Recommendation:** Staff recommends that the City Commission approve the Funding Agreement for 2011 Air Quality Equipment with the Montana Department of Transportation.

**Background:**

Purpose

The attached agreement sets forth the terms and conditions for the Montana Department of Transportation (MDT) to purchase, and then transfer title of one street vacuum sweeper to the City of Great Falls.

MDT utilizing MACI discretionary funds conducted the 2011 Statewide Air Quality Equipment Project. Past funding for this project was limited to only those areas designated by the Environmental Protection Agency (EPA) as “non-attainment” for the pollutant PM-10. However, in a pro-active approach to improving air quality MDT has also allowed areas identified by the Montana Department of Environmental Quality (DEQ) as “at risk” for non-attainment to participate in the program. Great Falls, along with several other Montana communities, was identified as “at risk” for non-attainment for the PM-10 pollutant. City staff successfully applied for MACI funding to purchase

air quality equipment under the project. Funds for the required 13.42%, \$27,024 local match are provided for in the FY 2012 Street Maintenance District ERS.

**Fiscal Impact:** The total cost of the street cleaning equipment is \$201,375 of which 86.58% or \$174,350 will be provided through the Montana Air & Congestion Initiative (MACI) Program. The remaining 13.42% or \$27,024 is the required local match which will be funded through the City's Central Garage Budget.

**Alternatives:** Reject the Funding Agreement with the Montana Department of Transportation for Air Quality Equipment.

**Attachments/Exhibits:** Agreement

**Memorandum of Agreement**  
**Between the**  
**Montana Department of Transportation (MDT) and the City of Great Falls**  
**for Air Quality Equipment -- UPN 6770 - CM STWD (110)**  
**CFDA# 20.205**

This Agreement made and entered into by and between the Montana Department of Transportation (MDT) and the City of Great Falls is to address the need for improving air quality by reducing PM-10 particulate matter in Great Falls. The acquisition of equipment identified in this Agreement provides the City of Great Falls the means to reduce PM-10 particulate matter and it is understood the equipment will be used solely for this purpose. The parties to this Agreement agree to the following:

1. The purpose of this Agreement is to set forth the terms and conditions for the MDT to acquire, and then transfer title of one (1) Large Vacuum Sweeper.

Item Description: (1) Large Vacuum Sweeper	
Total Cost inclusive of Indirect Cost:	<u>\$201,375</u>

2. This agreement is effective for this equipment purchase for the useful life of the equipment as per Title 49 CFR Subtitle A. Actual award is contingent on FHWA funding.

3. It is understood and agreed between the parties that: Section 17-1-106. MCA requires any state agency, including MDT that receives non-general funds to identify and recover its indirect costs. These costs are in addition to direct project costs. MDT's indirect cost rate is determined annually as a percentage of the project's direct costs to cover the projects share of MDT's indirect costs as defined by 2 CFR Part 225 (formerly OMB Circular A-87). MDT's current indirect cost rate is 9.64% for this project.

For this project, MDT billings to the City of Great Falls will include a charge for the indirect costs at the current fiscal year indirect cost rate, which amount will be applied toward the total project contribution of the City. If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the project.

4. The acquisition of the equipment shown above under item (1) will be funded with Montana Air and Congestion Initiative (MACI) program funds made available to the City of Great Falls and non-federal local match. The financial responsibility of the parties in this Agreement is:

MDT	MACI Funds (86.58%)	\$174,350
City of Great Falls	Non-Federal match (13.42%)	<u>\$ 27,024</u>
	<b>Total</b>	<b>\$201,375</b>

5. Method of payment – MDT will invoice the City of Great Falls for the non-federal matching funds shown under item (4) once the equipment vendor has been selected and no more the 60-days prior to delivery. The local agency will submit payment to MDT within thirty (30) days of billing. If payment is not made within that thirty (30) day period, interest on the unpaid amount will accrue at the rate of 10% per year, and continue to accrue until paid in full. If the City of Great Falls does not make timely payment, MDT may not participate in any future funding agreements with the City of Great Falls until full payment, including interest, is received. The equipment will not be released by MDT until these requirements are met. The contact for billing, accounting and change order questions for the Local Agency shall be:

Jim Rearden, Great Falls Director of Public Works, PO Box 5021, Great Falls MT 59403

6. Receipt of Equipment – the equipment listed under item (1) will be delivered by the vendor to MDT in Helena, MT. The City of Great Falls agrees to receive the equipment from MDT Equipment Shop located in Helena, MT, and to bear the cost of transporting the equipment to their locale. The City of Great Falls agrees to activate the warranty and title of the equipment upon receipt from MDT. The City of Great Falls agrees to maintain the Project equipment at a high level of safety and mechanical soundness.

7. Retention /Disposal of Equipment – The City of Great Falls agrees to retain and maintain the equipment for its stated program purposes for the useful life of the equipment. After its useful life, any income generated by the lease, sale, or other use of equipment acquired with federal funds, shall be on the basis of fair market value. Such income shall be used on this Congestion Mitigation and Air Quality (CMAQ) project or any other Title 23 (transportation) eligible project. The City of Great Falls agrees to record the receipt of the proceeds of the lease, sale or other use of the equipment in the City of Great Falls accounting system, showing that the funds are restricted for use in a subsequent acquisition of equipment compatible with the program purpose. The City of Great Falls agrees to maintain records of the disposition of the equipment for a period of three years beyond the useful life of the equipment, failure to comply with this may impact City of Great Falls future program eligibility.

8. Access and Retention of Records – The City of Great Falls agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine compliance with this Agreement. The City of Great Falls agrees to create and retain records supporting this Agreement for a period of three years after the completion date of this Agreement or the conclusion of any claim, litigation or exception relating to this Agreement taken by the State of Montana or a third party.

9. Assignment, Transfer and Subcontracting – The City of Great Falls shall not assign, transfer or subcontract any portion of this Agreement without the express written consent of the State.

10. Choice of Law and Venue – In the event of litigation concerning this Agreement, venue will only be in District Court of the First Judicial District of the State of Montana in and for the County of Lewis and Clark. This Agreement will be interpreted according to Montana law.

11. Agreement Modification – Any change to this Agreement will only be by written agreement between parties.

12. Indemnification - The parties agreed that MDT's only role in this Agreement is to pay for part of the requested equipment. The City of Great Falls agrees to protect, defend, and save the State, MDT, its elected and appointed officials, agents and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the costs of defense thereof, arising in favor of the City of Great Falls' employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of performance of this Agreement, including any use of the equipment purchased under this Agreement.

13. Severability and Integration – If any single part or parts of this Agreement are determined to be void, the remaining parts will remain valid and operative. This Agreement, as written, expresses the total, final and only agreement of the parties relevant to its subject matter. No provision, expressed 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 Agreement unless specifically provided within the written terms herein.

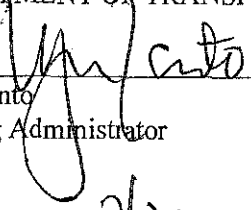
14. Compliance with Laws – The City of Great Falls must, in the performance of this Agreement, fully comply with all applicable federal, state or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Attachment A, Non-Discrimination Notice, is incorporated

into this Agreement and during the performance of this Agreement, The City of Great Falls for itself, its assignees and successors in interest, agrees to adhere to the contents of Attachment A.

15. Termination – The parties may mutually terminate this Agreement in writing at any time. MDT, at its sole discretion, may terminate or reduce the scope of this Agreement if available funding is reduced for any reason. MDT may terminate this Agreement in whole or in part at any time the City of Great Falls fails to perform the Agreement terms as set forth.


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

STATE OF MONTANA  
DEPARTMENT OF TRANSPORTATION

By:   
Lynn Zanto  
Planning Administrator

Dated: 2/21, 2012


Approved for Legal Content

By:  Date 2/15, 2012  
MDT Legal Services

CITY OF GREAT FALLS

By:   
Greg Doyon  
Great Falls City Manager

Dated: 2/8, 2012

By:  Date 2/2/08, 2012  
City of Great Falls Attorney (optional)

Attachment A

NON-DISCRIMINATION NOTICE

During the performance of this Agreement, and the local agency named in this agreement the City of Great Falls (hereafter in this Section "the Party"), for itself, its assignees and successors in interest, agrees as follows:

A) **COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS**

- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR) Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
  - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
  - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is

threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

**B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, SEC. 49-3-207, MCA**

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

**C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

- (1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **"The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party."**
- (3) All video recordings produced and created under contract and/or agreement will be closed-captioned.

**D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26**

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

**The Party, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Party 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**