

# PLANNING ADVISORY BOARD ZONING COMMISSION

NOVEMBER 13, 2012

## FFY2013 SECTION 5303 FUNDING AGREEMENTS

### *Source*

Great Falls Planning & Community Development Department

### *Attachment A*

Section 5303 Contract (between the Montana Dept. of Transportation & Planning Board)

### *Attachment B*

Section 5303 Contract for Pass Through of Funds to the Great Falls Transit District Board (between the Planning Board & Transit District Board)

### *Requested Action*

Approve the FFY2013 Section 5303 Agreements

### *Project Planner*

Andrew Finch

## SUMMARY

### **Overview**

Annually, the Planning Board enters into agreements with the Montana Department of Transportation (MDT) and the Great Falls Transit District (GFTD) to receive and pass on Federal transit planning funds. The subject agreements 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 staff annually prepares a Unified Planning Work Program (UPWP) to identify work activities to be undertaken by the Planning Staff and the Great Falls Transit District for the upcoming Federal Fiscal Year.

On August 9, 2012, the Planning Board approved the FFY 2013 Unified Planning Work Program (UPWP). Along with identifying work activities, the UPWP also identifies funding sources and the level of funds proposed for each work activity, including transit-related funding and work.

In accordance with the UPWP, the Montana Department of Transportation (MDT) will provide \$95,402 in Federal Transit Administration (FTA) "Section 5303" funds for local transit planning activities. In turn, the Planning Board will "pass through" these FTA funds to the Great Falls Transit District Board. 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. The Transit District is to receive \$95,402 of the transit planning funds, matched with \$14,787 in non-federal funds. Although in past years the Planning staff has retained a portion of these funds for its work on transit planning, these activities will now be covered with other Federal planning funds for ease of administration.

The Transit District will use the transit planning funds (\$119,252 - total amount, including match) for Administration (\$19,055), Service Planning and Assessment (\$38,397), Service Enhancement (\$13,390), and Americans with Disabilities Act (ADA) Implementation (\$48,410).

### **Summary**

The Board is being asked to execute two Section 5303 Contracts—one between MDT and the Planning Board, and the other between the Planning Board and the Transit District. Approval of the contract with MDT formalizes the receipt of these funds. The second contract is necessary to "pass through" the Transit District's portion and commit the District to the same provisions as the Planning Board.

## RECOMMENDATION

**It is recommended the Planning Board approve the FFY2013 Section 5303 Agreements.**

Contract: 106743  
CFDA No. 20.505  
DUNS#: 028164515

#### SECTION 5303 CONTRACT

This Contract is made by the Montana Department of Transportation Rail, Transit and Planning Division (State), 2701 Prospect Avenue, Helena, Montana and the Great Falls Planning Advisory Board (Contractor), P. O. Box 5021, Great Falls, Montana 59403-5021. Liaison for the State is Zia Kazimi, Supervisor, Statewide and Urban Planning Section; Liaison for Contractor is the Planning Director, City of Great Falls.

The State, having received federal grant monies from the Federal Transit Administration (FTA), through Section 5303 of the Federal Transit Act, and desiring to assist the Grantee, enters into the following Contract with Contractor. Actual award is contingent upon the availability of FTA funding.

#### ARTICLE 1. PROJECT

SECTION 1.1 Purpose of Contract. This Contract provides assistance to the Grantee to evaluate, select and monitor technical study projects and transportation planning projects proposed by local metropolitan planning organizations or public bodies and agencies.

SECTION 1.2 Scope of Project. The Grantee shall undertake and complete the Project as described in the Grantee's Unified Planning Work Program (UPWP), hereby incorporated by reference, as already filed with and approved by the State.

SECTION 1.3 Period of Performance. This Contract will be effective from October 1, 2012 to September 30, 2013. Pre-award authority to incur project costs is provided in Federal Register Notice Vol. 73, No. 18, pages 4973-4976, January 28, 2008, Federal Register Notice Vol. 73, No. 244, pages 77361 and 77362, December 18, 2008 and Federal Register Notice Vol. 77, No. 7, pages 1805-1808, subject to the conditions and requirements contained therein.

SECTION 1.4 Costs of Project and Payment Terms. The total cost of the Project shall be \$119,252.50. The cost of the project shall be shared as follows:

Federal Share	80%	\$95,402.00
Local Share	20%	\$23,850.50

The Grantee agrees to provide matching funds to ensure payment of Project costs. Grantee shall provide these funds when necessary to meet Project costs. The Grantee will not refund or reduce its share of the Project cost unless there is a corresponding proportional grant amount refund to the State.

The State will make quarterly grant payments to Grantee based upon the State's approval of reports and invoices as submitted by the Grantee.

SECTION 1.5 Travel Requests. The State must give prior written approval for the Grantee 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 2-18-501, M.C.A., et seq.

SECTION 1.6 Budget Changes. The Grantee shall submit to the State for prior approval any changes in a work element resulting in a cost increase or decrease over 10%. The Grantee shall indicate the task and amount of the overrun. The Grantee 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. The Grantee shall indicate from which tasks federal funding will be transferred to offset the task over expended.

SECTION 1.7 Records, Reports and Information Access.

1.7.1 Recordkeeping. The Grantee shall keep records regarding the use of Project property, compliance with the provisions of this Contract, the federal assurances included herein, and such records as the State and FTA may require, including financial statements, program operation data, contracts and other project-related documents. If a third party has exclusive possession of any required information and refuses or fails to provide that information, the Grantee shall inform the State and set forth its efforts to obtain this information. Grantee shall maintain these records for at least three years after any final payment and all other matters pending under this Contract are closed.

1.7.2 Reporting. The Grantee will submit a progress report and financial report to the State at the end of each quarter. These reports are to be submitted to the State within 15 days after the end of each quarter.

1.7.3 Information Access. The Grantee shall permit the State and the FTA or their authorized representatives, to inspect all work materials, payrolls and other data and records with regard to the project, and to audit the books, records and accounts with regard to the project.

ARTICLE 2. DEFAULT AND TERMINATION

SECTION 2.1 Default. Nonperformance by the Grantee of any obligation imposed by this Contract, including noncompliance with the federal assurances in Articles 3 and 4 and reduction of local project cost funding, will constitute default.

SECTION 2.2 Terminations. This Contract may be terminated by the State by serving a notice of termination on the Grantee. Termination may occur for either convenience or default. If termination is for convenience, the notice shall give the Grantee thirty days to wind down its activities under this Contract. If termination occurs due to default, the notice shall state the manner of the Grantee's default and offer the Grantee an opportunity to explain its nonperformance. If the State finds that the Grantee has a reasonable excuse for nonperformance, which is beyond the control of the Grantee, the State may set up a new work schedule and allow the completion of this Contract.

In any termination, the State will make its contractual payments proportionate to the work performed to the time of termination. Grantee shall account for any Project property in its possession.

SECTION 2.3 Litigation. Controversy arising from this contract may result in litigation. Arbitration is not available. Montana Law shall govern this Contract.

SECTION 2.4 Venue. In the event of litigation concerning this Contract, venue shall only be in the First Judicial District of the State of Montana, Lewis and Clark County.

#### ARTICLE 3. MISCELLANEOUS

SECTION 3.1 Contract Modification. Any change in this Contract must be by written agreement of the Parties.

SECTION 3.2 Assignment and Subcontracting. The Grantee shall not assign or subcontract any portion of the work to be performed under this Contract without the prior written approval of the State.

SECTION 3.3 Subcontracts. The Grantee shall include in all subcontracts entered into pursuant to this Contract all of the above clauses inclusive and a statement that all provisions of this contract are specifically included in, and are a part of, the subcontract. In addition, the Grantee shall include the following provisions in any advertisement or invitation to bid for any procurement under this Contract:

Statement of Financial Assistance

This agreement is subject to a financial assistance contract between the Montana Department of Transportation, the U.S. Department of Transportation, and the Federal Transit Administration.

SECTION 3.4 Indemnification. It is mutually agreed that Grantee is an independent Contractor. Grantee agrees to protect, defend, indemnify and save harmless the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, liabilities demands, causes of action, and judgments, including all costs of defense and attorney's fees, arising in favor of or asserted by Grantee's employees, or third parties, on account of bodily or personal injuries, death, or damage to property related to or arising out of the performance of this contract.

SECTION 3.5 Settlements of Third Party Contract Disputes or Breaches. The term third-party contract, as used in this Contract, is defined as a contract between the Grantee and its subcontractor in which the Grantee has procured a good and/or service commercially from the subcontractor. FTA has a vested interest in the settlement of disputes, defaults, or breaches involving any federally-assisted third party contracts. 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, the Grantee shall avail itself of all legal rights available under any third party contract. The Grantee 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 the Grantee'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 3.6 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 3.7 Agency Assistance. No assistance, other than provided for by this Contract, will be required, but may be provided at the sole discretion of State.

SECTION 3.8 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, and exhibits, represents the complete and entire understanding of the parties on 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 contract unless it is reduced to writing, signed by the parties, and attached to this document.

SECTION 3.9 Prohibited Interest. No employee, officer, board member or agent of the Grantee 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:

- A. The employee, officer, board member or agent;
- B. Any member of his or her immediate family;
- C. His or her partner; or
- D. An organization which employs or is about to employ any of the above, has a financial interest in the firm selected for award. The Grantee'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 agreements.

SECTION 3.10 Interest of Members of or Delegates to Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

SECTION 3.11 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.

SECTION 3.12 Ineligible Bidders. Bidders or Suppliers whose names appear on the U. S. Comptroller General's List of Ineligible Contractors are not eligible for award of, or participation, in any contract that may be awarded as a result of this Contract. Submission of a bid by any bidder constitutes certification that he or any subcontractor or suppliers to him, on this 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 facts in this regard will be cause for immediate disqualification, suspension or termination of the contract for cause.

SECTION 3.13 Lobbying Restrictions. The Grantee agrees that:

1) In compliance with 31 U.S.C. 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress in connection with making or extending the Grant Agreement or Cooperative Agreement;

2) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and

3) It will comply, and will assure the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the project with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. 1352, as amended.

SECTION 3.14 Employee Political Activity. The provisions of 5 U.S.C. 1501-1508 (the "Hatch Act"), and implementing regulations set forth in 5 C.F.R. Part 151 are applicable to State and local agencies and their officers and employees to the extent covered by the statute and regulations. The "Hatch Act" restricts the political activity of an individual principally employed by a State or local executive agency in connection with a program financed in whole or in part by Federal loans, grants, or cooperative agreement.

SECTION 3.15 False or Fraudulent Statements or Claims. The Grantee acknowledges that should it make a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with this project, FTA reserves the right to pursue the procedures and impose on the Grantee the penalties of 18 U.S.C. 1001, 31 U.S.C. 3801, *et seq.*, and/or 49 U.S.C. 5307(n) (1) as may be deemed by FTA to be appropriate.

SECTION 3.16 Debarment and Suspension. The Grantee shall obtain from its third party contractors certifications required by Department of Transportation regulations, "Government wide Debarment and Suspensions (Nonprocurement)." 49 C.F.R. Part 29, and otherwise comply with the requirements of those regulations.

SECTION 3.17 No Government Obligations to Third Parties. The State and Federal Government shall not be subject to any obligations or liabilities to any third party in connection with the performance of this Project without its specific written consent. Neither the concurrence in nor the approval of the award of this contract or any subcontract, or the solicitation thereof, nor any other act performed by the State under this contract shall constitute such consent.

SECTION 3.18 Elderly and Handicapped. The Grantee agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*, and implementing regulations, which prohibit employment or other discrimination against individuals on the basis of age. The Grantee also agrees to comply with the requirements of 49 U.S.C. 5301(d), 29 U.S.C. 794, the Americans with Disabilities Act, as amended (42 U.S.C. 12101 *et seq.*), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*), as well as the applicable requirements of the regulations implementing those laws.

SECTION 3.19 Buy America. The Grantee agrees that, in its execution of this Contract, it will comply with the requirements of 49 U.S.C 5323(j), FTA

regulations set forth at 49 C.F.R. Part 661 and any implementing guidance FTA may issue.

SECTION 3.20 Energy Conservation. The Grantee and its third party contractors shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6321, *et seq.*

SECTION 3.21 Air Quality. Except to the extent the Federal Government determines otherwise in writing, the Grantee agrees to comply with all applicable federal laws and regulations and follow applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C 7401 through 7671q. Specifically:

1) The Grantee agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 U.S.C. 7506(c); to comply with U.S. EPA regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, Subpart A; and to comply with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the Grantee agrees to implement each air quality mitigation or control measure incorporated in the applicable documents accompanying approval of the Project. The Grantee further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended that may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, to the extent they apply to the Project, the Grantee agrees to comply with U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; U.S. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600, and any revisions thereto.

3) The Grantee agrees to comply with the notice of violating facility provisions of Section 306 of the Clean Air Act, as amended, 42 U.S.C. 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. 7606 note.

SECTION 3.22 Clean Water. Except to the extent the Federal Government determines otherwise in writing, the Grantee agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. 1251 through 1377. Specifically:

1) The Grantee agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f through 300j-6.

2) The Grantee agrees to comply with the notice of violating facility provisions of section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. 7606 note.

SECTION 3.23 Federal Changes. Grantee shall at all times comply with all applicable FTA regulations, policies, procedures and directives,

including without limitation those listed directly or by reference in the Master Agreement between the State and FTA, as they may be amended or promulgated from time to time during the term of this contract. Grantee's failure to so comply shall constitute a material breach of this contract.

SECTION 3.24 Incorporation of FTA Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. Anything to the contrary here in withstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Grantee 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.

SECTION 3.25 Equal Employment Opportunity. No part of this Contract or performance of this Contract, including, but not limited to: employment, promotion, demotion, recruitment, termination, compensation, and training, by the State or the Grantee will be in a manner that discriminates against any person on the basis of race, color, religion, creed, political ideas, sex, age, marital status, familial status, physical or mental disability, genetics or national origin.

SECTION 3.26 Authority. The Grantee warrants that it has the lawful authority to enter this Contract and that it has taken all actions and complied with all procedures necessary to execute the authority lawfully in entering this Contract, and that the undersigned signatory for Grantee has been lawfully delegated the authority to sign this Contract on behalf of Contractor.

SECTION 3.27 Audit Requirement The Grantee shall perform or cause to be performed an audit in compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 et seq. and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations." For local governments and school districts, the Grantee will provide the report to the State of Montana, Department of Administration, Local Government Services Bureau.

SECTION 3.28 Workers Compensation. The Grantee will provide a copy of its current worker's compensation coverage certificate at the time this Contract is executed.

SECTION 3.29 FTA Master Agreement The Grantee understands that this contract includes requirements specifically prescribed by Federal law or regulation and does not encompass all Federal laws, regulations, and directives that may apply to the Grantee or its project. A comprehensive list of those federal laws, regulation and directives is contained in the current FTA Master Agreement MA(18) at the FTA website <http://www.fta.dot.gov/documents/18-Master.pdf>. The clauses in this contract have been streamlined to remove most provisions not covered by statutory or regulatory certification and assurance requirements.

ARTICLE 4. NON-DISCRIMINATION NOTICE (hereinafter in this Article Grantee is referred to as "the Party".)

During the performance of this Contract, 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, Title 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 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, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (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 Transit Administration (FTA) 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 FTA as requested, fully stating the 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 FTA 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 FTA 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

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

NAME: Great Falls Planning Advisory Board

BY: \_\_\_\_\_  
CHAIRMAN

DATE: \_\_\_\_\_

MONTANA DEPARTMENT OF TRANSPORTATION  
TRANSPORTATION PLANNING DIVISION

BY: \_\_\_\_\_  
Lynn Zanto, Administrator

DATE: \_\_\_\_\_

Approved for Legal Content by: *Evelyn Bennett*

Approved for Civil Rights Content by: *Bill Johnson*

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

THIS Contract is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the GREAT FALLS PLANNING ADVISORY BOARD, P. O. Box 5021, Great Falls, Montana, (Planning Board) and the GREAT FALLS TRANSIT DISTRICT BOARD, P. O. Box 2353, Great Falls, Montana (Sub-grantee). Liaison for the Planning Board is the Senior Transportation Planner. Liaison for the Sub-grantee is the General Manager.

The Planning Board, having received Federal grant monies as a grantee from the Federal Transit Administration (FTA) through Section 5303 of the Federal Transit Act and through a Section 5303 contract with the Montana Department of Transportation (State), enters into the following Contract with the Sub-grantee. Actual award is contingent upon the availability of FTA funding.

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## ARTICLE 2. DEFAULT AND TERMINATION

SECTION 2.1 Default. Non-performance by the Sub-grantee of any obligation imposed by this Contract, including noncompliance with the Federal assurances in Articles 3 and 4 and reduction of local project cost funding, will constitute default.

SECTION 2.2 Terminations. This Contract may be terminated by the Planning Board, in consultation with the State, by serving notice of termination on the Sub-grantee. Termination may occur for either convenience or default. If termination is for convenience, the notice shall give the Sub-grantee thirty days to wind down its activities under this Contract. If termination occurs due to default, the notice shall state the manner of the Sub-grantee's default, and offer the Sub-grantee an opportunity to explain its nonperformance. If the Planning Board and State find that the Sub-grantee has a reasonable excuse for nonperformance, which is beyond the control of the Sub-grantee, the Planning Board may set up a new work schedule and allow the completion of this Contract.

In any termination, the Planning Board will make its contractual payments, contingent upon like payment from the State to the Planning Board, proportionate to the work performed to the time of termination. The Sub-grantee shall account for any Project property in its possession.

SECTION 2.3 Litigation. Controversy arising from this contract may result in litigation. Arbitration is not available. Montana Law shall govern this Contract.

SECTION 2.4 Venue. In the event of litigation concerning this Contract, venue shall be in the Eighth Judicial District of the State of Montana, Cascade County.

## ARTICLE 3. MISCELLANEOUS

SECTION 3.1 Contract Modification. Any change in this Contract must be by written agreement of the Parties.

SECTION 3.2 Assignment and Subcontracting. The Sub-grantee shall not assign or subcontract any portion of the work to be performed under this Contract without the prior written approval of the State, via the Planning Board.

SECTION 3.3 Subcontracts. The Sub-grantee shall include in all subcontracts entered into pursuant to this Contract all of the above clauses inclusive and a statement that all provisions of this contract are specifically included in, and are a part of, the subcontract. In addition, the Sub-grantee shall include the following provisions in any advertisement or invitation to bid for any procurement under this Contract:

### **Statement of Financial Assistance**

**This agreement is subject to a financial assistance contract between the Montana Department of Transportation, the U. S. Department of Transportation and the Federal Transit**

## **Administration.**

SECTION 3.4 Indemnification. It is mutually agreed that the Sub-grantee is an independent Contractor. The Sub-grantee agrees to protect, defend, indemnify and save harmless the Planning Board, Planning staff, the State of Montana, Montana Department of Transportation, their elected and appointed officials, agents and employees while acting within the scope of their duties as such, harmless from and against all claims, liabilities demands, causes of action, and judgments, including all costs of defense and attorney's fees, arising in favor of or asserted by Sub-grantee's employees, or third parties, on account of bodily or personal injuries, death, or damages to property related to or arising out of this contract.

SECTION 3.5 Settlement of Third Party Contract Disputes or Breaches. The term third-party contract, as used in this Contract, is defined as a contract between the Sub-grantee and its Subcontractor in which the Sub-grantee has procured a good and/or service commercially from the Subcontractor. FTA has a vested interest in the settlement of disputes, defaults, or breaches involving any federally-assisted third party contracts. 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, the Sub-grantee shall avail itself of all legal rights available under any third party contract. The Sub-grantee shall notify the Planning Board and 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 the Sub-grantee'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 3.6 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 3.7 Agency Assistance. No assistance, other than provided for by this Contract, will be required, but may be provided at the discretion of the Planning Board and/or the State.

SECTION 3.8 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 and exhibits, represents the complete and entire understanding of the Parties on 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 Contract unless it is reduced to writing, signed by the Parties, and attached to this document.

SECTION 3.9 Prohibited Interest. No employee, officer, board member or agent of the Sub-grantee 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:

- A. The employee, officer, board member or agent;
- B. Any member of his or her immediate family;
- C. His or her partner; or
- D. An organization which employs or is about to employ any of the above, has a financial interest in the firm selected for award. The Sub-grantee'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-agreements.

SECTION 3.10 Interest of Members of or Delegates to Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising there from.

SECTION 3.11 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.

SECTION 3.12 Ineligible Bidders. Bidders or Suppliers whose names appear on the U. S. Comptroller General's List of Ineligible Contractors are not eligible for award of, or participation in, any contract that may be awarded as a result of this Contract. Submission of a bid by any bidder constitutes certification that he or any subcontractor or suppliers to him, on this 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 facts in this regard will be cause for immediate disqualification, suspension or termination of the contract for cause.

SECTION 3.13 Lobbying Restrictions. The Sub-grantee agrees that: 1) In compliance with 31 U.S.C. 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress in connection with making or extending the Grant Agreement or Cooperative Agreement; 2) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of federal assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and 3) It will comply, and will assure the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the project with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. 1352, as amended.

SECTION 3.14 Employee Political Activity. The provisions of 5 U.S.C. 1501-1508 (the "Hatch Act"), and implementing regulations set forth in 5 C.F.R. Part 151 are applicable to State and local agencies and their officers and employees to the extent covered by the statute and regulations. The "Hatch Act" restricts the political activity of an individual principally employed by a State or local executive agency in connection with a program financed in whole or in part by Federal loans, grants, or cooperative agreement.

SECTION 3.15 False or Fraudulent Statements or Claims. The Sub-grantee



acknowledges that should it make a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with this project, FTA reserves the right to pursue the procedures and impose on the Sub-grantee the penalties of 18 U.S.C. 1001, 31 U.S.C. 3801, *et seq.*, and/or 49 U.S.C. 5307(n) (1) as may be deemed by FTA to be appropriate.

SECTION 3.16 Debarment and Suspension. The Sub-grantee shall obtain from its third party Contractors certifications required by Department of Transportation regulations, “Government-wide Debarment and Suspension (Non-procurement).” 49 C.F.R. Part 29, and otherwise comply with the requirements of those regulations.

SECTION 3.17 No Planning Board and/or Government Obligations to Third Parties. The Planning Board, State and Federal Government shall not be subject to any obligations or liabilities to any third party in connection with the performance of this Project without its specific written consent. Neither the concurrence in nor the approval of the award of this Contract or any subcontract, or the solicitation thereof, nor any other act performed by the Planning Board and/or State under this Contract shall constitute such consent.

SECTION 3.18 Elderly and Handicapped. The Sub-grantee agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*, and implementing regulations, which prohibit employment or other discrimination against individuals on the basis of age. The Sub-grantee also agrees to comply with the requirements of 49 U.S.C. 5301(d), 29 U.S.C. 794, the Americans with Disabilities Act, as amended (42 U.S.C. 12101 *et seq.*), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*), as well as the applicable requirements of the regulations implementing those laws.

SECTION 3.19 Buy America. The Sub-grantee agrees that, in its execution of this Contract, it will comply with the requirements of 49 U.S.C. 5323(j), FTA regulations set forth at 49 C.F.R. Part 661 and any implementing guidance FTA may issue.

SECTION 3.20 Energy Conservation. The Sub-grantee and its third party Contractors shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6321, *et seq.*

SECTION 3.21 Air Quality. Except to the extent the Federal Government determines otherwise in writing, the Sub-grantee agrees to comply with all applicable federal laws and regulations and follow applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. 7401 through 7671q. Specifically: 1) The Sub-grantee agrees to comply with the applicable requirements of subsection 176<sup>©</sup> of the Clean Air Act, 42 U.S.C. 7506<sup>©</sup>; to comply with U.S. EPA regulations, “Determining Conformity of Federal Actions to State or Federal Implementation Plans,” 40 C.F.R. Part 93, Subpart A; and to comply with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the Sub-grantee agrees to implement each air quality mitigation or control measure incorporated in the applicable documents accompanying approval of the Project. The Sub-grantee further agrees that any Project identified

in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP. 2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, to the extent they apply to the Project, the Sub-grantee agrees to comply with U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; U.S. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600, and any revisions thereto. 3) The Sub-grantee agrees to comply with the notice of violating facility provisions of section 306 of the Clear Air Act, as amended, 42 U.S.C. 7414, and facilitate compliance with Executive Order No 11738, "Administration of the Clean Air Act and Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. 7606 note.

SECTION 3.22 Clean Water. Except to the extent the Federal Government determines otherwise in writing, the Subcontractor agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. 1251 through 1377. Specifically: 1) The Subcontractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f through 300j-6. 2) The Subcontractor agrees to comply with the notice of violating facility provisions of section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. 7606 note.

SECTION 3.23 Federal Changes. The Sub-grantee shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the State and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Sub-grantee's failure to so comply shall constitute a material breach of this Contract.

SECTION 3.24 Incorporation of FTA Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Contract provisions. Anything to the contrary herein withstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Sub-grantee 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.

SECTION 3.25 Equal Employment Opportunity. No part of this Contract or performance of this Contract, including, but not limited to: Employment, promotion, demotion, recruitment, termination, compensation and training, by the State, Planning Board or Sub-grantee will be in a manner that discriminates against any person on the basis of race, color, religion, creed, political ideas, sex, age, marital status, familial status, physical or mental disability, genetics or national origin.

SECTION 3.26 Authority. The Sub-grantee warrants that it has the lawful authority to enter this Contract, and that it has taken all actions and complied with all procedures necessary to execute the authority lawfully in entering this Contract, and that the undersigned signatory for Sub-grantee has been lawfully delegated the authority to sign this Contract on behalf of Sub-grantee.

SECTION 3.27 Audit Requirement. The Sub-grantee shall perform or cause to be performed an audit in compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et. seq.* and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations." For local governments and school districts, the Sub-grantee will provide the report to the State of Montana, Department of Administration, Local Government Services Bureau.

SECTION 3.28 Workers' Compensation. The Sub-grantee will provide a copy of its current workers' compensation coverage certificate at the time this Contract is executed.

SECTION 3.29 FTA Master Agreement. The Sub-grantee understands that this contract includes requirements specifically prescribed by Federal law or regulation and does not encompass all Federal laws, regulations, and directives that may apply to the Grantee or its project. A comprehensive list of those federal laws, regulation and directives is contained in the current FTA Master Agreement MA(18) at the FTA website <http://www.fta.dot.gov/documents/17-Master.pdf>. The clauses in this contract have been streamlined to remove most provisions not covered by statutory or regulatory certification and assurance requirements.

#### **ARTICLE 4. NON-DISCRIMINATION NOTICE**

During the performance of this Contract, the Sub-grantee, for itself, its assigns 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 Sub-grantee shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, DOT) Title 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 Contract, even if only State funding is here involved.
2. Nondiscrimination: The Sub-grantee, with regard to the work performed by it during this Contract, shall not discriminate on the grounds of sex, race, color or national origin in the selection and retention of Sub-grantees, including procurements of materials and leases of equipment. The Sub-grantee shall not participate either directly or indirectly in the

discrimination prohibited by 49 CFR Sec. 21.5, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations whether by competitive bidding or negotiation by the Sub-grantee for work to be performed under a subcontract, including procurements of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Sub-grantee of the Sub-grantee's obligations under this Contract and the Regulations relative to nondiscrimination.
  4. Information and Reports: The Sub-grantee 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 the State or the Federal Transit Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the Sub-grantee is in the exclusive possession of another who fails or refuses to furnish this information, the Sub-grantee shall so certify to the State or the Federal Transit Administration as requested, setting forth what efforts it has made to obtain the information.
  5. Sanctions for Noncompliance: In the event of the Sub-grantee's noncompliance with nondiscrimination provisions of this Contract, the State may impose sanctions as it or the Federal Transit Administration may determine to be appropriate, including, but not limited to:
    - a) Withholding payments to the Sub-grantee under this Contract until the Sub-grantee complies; and/or
    - b) Cancellation, termination, or suspension of this Contract, in whole or in part.
  6. Incorporation of Provisions: The Sub-grantee will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Sub-grantee will take such action with respect to any subcontract or procurement as the State or the Federal Transit Administration may direct to enforce such provisions including sanctions for noncompliance; provided, however, that, in the event a Sub-grantee is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Sub-grantee may request the State to enter into litigation to protect the interest of the State, and, in addition, the Sub-grantee 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 Sub-grantee agrees that for this Contract 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 Contract.

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

1. The Sub-grantee will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
2. The Sub-grantee will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs:

**"The Sub-grantee will provide reasonable accommodations for any known disability that may interfere with a person participating in any service, program or activity offered by the Sub-grantee. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Sub-grantee."**

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 contract the Planning Board signs with a Sub-grantee (and each subcontract the prime Contractor signs with a subcontractor) must include the following assurance:

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

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

Name: Great Falls Transit District Board

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

Title: General Manager

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

Name: Great Falls Planning Advisory Board

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

Title: Chairman

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