

# PLANNING ADVISORY BOARD ZONING COMMISSION

NOVEMBER 12, 2014

## FFY2015 SECTION 5303 FUNDING CONTRACTS

### *Source*

Great Falls Planning & Community Development Department

### *Attachment A*

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

### *Attachment B*

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

### *Requested Action*

Approve the FFY2015 Section 5303 Contracts

### *Project Planner*

Andrew Finch

## SUMMARY

### **Overview**

Annually, the Planning Advisory Board enters into contracts with the Montana Department of Transportation (MDT) and the Great Falls Transit District (GFTD) to receive and pass on Federal transit planning funds, referred to as “Section 5303 Contracts” after 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 upcoming Federal Fiscal Year.

On September 9, 2014, the Planning Advisory Board approved the FFY 2015 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 \$100,202 in Federal Transit Administration (FTA) “Section 5303” funds for local transit planning activities. In turn, the Planning Advisory Board has agreed to “pass through” the 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 non-Federal match of \$25,052 will be provided by the Transit District Board.

The Transit District will use the planning funds for Administration (\$19,055), Service Planning and Assessment (\$44,397), Service Enhancement (\$13,390), and Americans with Disabilities Act (ADA) Implementation (\$48,410).

To formalize the funding commitments and ensure the recipient (MPO) and sub-recipient (GFTD) 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 GFTD. The contracts are attached for Board review and action.

## RECOMMENDATION

**It is recommended the Planning Advisory Board approve the FFY2015 Section 5303 Contracts.**

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## ATTACHMENT A

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Contract: 108043  
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 Carol Strizich, 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, 2014 to September 30, 2015. 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 \$125,252. The cost of the project shall be shared as follows:

Federal Share 80%	\$100,202
Local Share 20%	\$ 25,050

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.

## ARTICLE 2. TERMS AND CONDITIONS

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

SECTION 2.2 Termination. 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 nature 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 properly performed in accordance with this Contract 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. This Contract shall be governed by Montana law.

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

SECTION 2.5 Contract Modification. Any change in this Contract will only be by written agreement of the Parties.

SECTION 2.6 Assignment and Subcontracting. The Grantee shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment or change order thereto, or obligate Grantee in any manner with any third party with respect to Grantee's rights and responsibilities under this Agreement, without the prior written concurrence of the State. Subcontracts. The Grantee shall include in all subcontracts entered into pursuant to this Agreement a copy of this Contract, and the subcontract will make the provisions of this Contract a specific 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 Agreement:

SECTION 2.7 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 2.8 Indemnification. The Grantee shall indemnify, defend, and hold harmless the State of Montana, Department of Transportation, its employees and agents from and against all claims, demands, or actions from damages to property or injury to persons or other damage to persons or entities including all costs of defense and attorney fees, arising or resulting from the performance of this Contract.

SECTION 2.9 Access and Retention of Records. The Grantee agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine compliance with this Agreement. The Grantee 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.

SECTION 2.10 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 2.11 Agency Assistance. No assistance, other than provided for by this Contract, will be required, but may be provided at the discretion of State.

SECTION 2.12 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, 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 2.13 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 3. FEDERAL REQUIREMENTS

SECTION 3.1 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, regulations and directives is contained in the current FTA Master Agreement MA(20) at the FTA website <http://www.fta.dot.gov/documents/20-Master.pdf>. The clauses in this contract have been streamlined to remove most provisions not covered by statutory or regulatory certification and assurance requirements. The Grantee's signature upon this document acknowledges they have read and understood the Master Agreement.

The Grantee also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

SECTION 3.2 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:

- (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. 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 3.3 Ineligible Bidders. Bidders or Suppliers whose names appear on the US Comptroller General's List located at <https://www.sam.gov/portal/public/SAM/> of Ineligible Contractors are not eligible for award of, or participation in, any contract that may be awarded as a result of this agreement. Submission of a bid by any bidder constitutes certification that the bidder 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 3.4 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 State or Federal Government in connection with this project, FTA reserves the right to pursue the procedures and impose on the Grantee the penalties of 18 USC 1001, 31 USC 3801, as may be deemed by FTA to be appropriate.

SECTION 3.5 Debarment and Suspension. The Grantee shall obtain from its third party contractors certifications required by Department of Transportation regulations, "Government-wide Debarment and Suspension (Non-procurement)," 49 CFR Part 29, and otherwise comply with the requirements of those regulations a list of debarred entities is located at <https://www.sam.gov/portal/public/SAM/>.

SECTION 3.6 No State or Federal Obligations to Third Parties. The State shall not be subject to any obligations or liabilities to any third party in connection with the performance of this Project 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 subcontract, or the solicitation thereof, nor any other act performed by the State under this contract shall constitute such consent.

SECTION 3.7 Age Discrimination and ADA. The Grantee agrees 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. The Grantee also agrees 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 3.8 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 3.9 Settlement of Third Party Contract Disputes or Breaches. The term "third-party contract," as used in this Agreement, 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 3.10 Incorporation of FTA Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. 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 Agreement. 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 3.11 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. The Grantee understands that it is its responsibility to learn what federal, state and local laws and regulations will apply to its operation under this Contract, and that Grantee is solely responsible for its lawful compliance, incorporated as Article 4.

SECTION 3.12 Drug and Alcohol Compliance. The Grantee shall comply with USDOT Federal Transit Administration 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. Grantee understands and agrees that failure to comply with this section constitutes default pursuant to Article 2, Section 2.1.

SECTION 3.13 Privacy Act. The Grantee 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, the Grantee agrees to obtain the express consent of the Federal Government before the Grantee or its employees operate a system of records on behalf of the Federal Government. The Grantee 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 3.14 Single Audit Act. The Grantee shall perform an audit in compliance with the Single Audit Act Amendments of 1996, 31 USC 7501 et seq. and OMB Circular 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 all other grantees such as Tribal Communities and Non-Profit Organizations will provide the report to the State of Montana, Department of Transportation, Internal Audit Unit.

THE GRANTEE WARRANTS that it has the lawful authority to enter this Agreement, and that it has taken all actions and complied with all procedures necessary to execute the authority lawfully in entering this Agreement, and that the undersigned signatory for Grantee has been lawfully delegated the authority to sign this Agreement on behalf of Grantee.

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

Montana Department of Transportation ("MDT") is committed to conducting all of its business in an environment free of discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination on the grounds of race, color, national origin, sex, age, physical or mental disability, parental/marital status, pregnancy, religion/creed/culture, political belief, genetic material, veteran status, or social origin/ancestry (hereafter "protected classes"). by its employees or anyone with whom MDT chooses to do business.

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. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
    - i. Statement that PARTY does not discriminate on the grounds of any protected classes.

- ii. Statement that 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 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, 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 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 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. 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. § 200d *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.*).

*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 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.

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: \_\_\_\_\_

Approved for Civil Rights Content by: \_\_\_\_\_

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## ATTACHMENT B

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

THIS Contract is made this \_\_\_\_\_ day of \_\_\_\_\_, 2014, 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-grantee). Liaison for the Planning Advisory 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.

**ARTICLE 1. PROJECT**

SECTION 1.1 Purpose of Contract. This Contract passes through federal assistance via the State to the Planning Board to the Sub-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 Sub-grantee shall undertake and complete the Project as described in the Planning Board'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 during the same time period as the Section 5303 Contract between the Planning Board and the State, which is October 1, 2014 to September 30, 2015. Pre-award authority to incur project costs is provided in Federal Register Notice Vol. 73, No. 18, pages 4973-4976, January 28, 2008 and 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.

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grantee will not refund or reduce its share of the Project costs unless there is a corresponding proportional grant amount refund to the State via the Planning Board.

The Planning Board will forward quarterly grant payments, when received from the State, to the Sub-grantee based upon the State's approval of reports and invoices as submitted by the Sub-grantee.

SECTION 1.5 Travel Requests. The Planning Board and the State must give prior written approval for the Sub-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 the rates prescribed in 2-18-501, M.C.A., *et seq.*

SECTION 1.6 Budget Changes. The Sub-grantee shall submit to the State, via the Planning Board, for prior approval, any changes in a work element resulting in a cost increase or decrease over 10%. The Sub-grantee shall indicate the task and amount of the overrun. The Sub-grantee shall notify the Planning Board 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.

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In any termination, the Planning Board will make its contractual payments proportionate to the work properly performed in accordance with this Contract to the time of termination. Sub-grantee shall account for any Project property in its possession.

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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.

SECTION 2.5 Contract Modification. Any change in this Contract will only be by written agreement of the Parties.

SECTION 2.6 Assignment and Subcontracting. The Sub-grantee 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-grantee in any manner with any third party with respect to Sub-grantee's rights and responsibilities under this Contract, without the prior written concurrence of the Planning Board and the State.

Subcontracts. The Sub-grantee shall include in all subcontracts entered into pursuant to this Contract a copy of this Contract, and the subcontract will make the provisions of this Contract a specific 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:

SECTION 2.7 Statement of Financial Assistance. This Contract 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 2.8 Indemnification. The Sub-grantee shall indemnify, defend, and hold harmless the Planning Board, the City of Great Falls, the State of Montana Department of Transportation, and their employees and agents from and against all claims, demands, or actions from damages to property or injury to persons or other damage to persons or entities including all costs of defense and attorney fees, arising or resulting from the performance of this Contract.

SECTION 2.9 Access and Retention of Records. The Sub-grantee agrees to provide the Planning Board, City of Great Falls, State, Legislative Auditor or their authorized agents access to any records necessary to determine compliance with this Contract. The Sub-grantee 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 Planning Board, State of Montana or a third party.

SECTION 2.10 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 2.11 Agency Assistance. No assistance, other than provided for by this Contract, will be required, but may be provided at the discretion of Planning Board or State.

SECTION 2.12 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, 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 2.13 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 3. FEDERAL REQUIREMENTS**

SECTION 3.1 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 Sub-grantee or its project. A comprehensive list of those Federal laws, regulations and directives is contained in the current FTA Master Agreement MA(20) at the FTA website <http://www.fta.dot.gov/documents/20-Master.pdf>. The clauses in this Contract have been streamlined to remove most provisions not covered by statutory or regulatory certification and assurance requirements. The Sub-grantee's signature upon this document acknowledges they have read and understood the Master Agreement.

The Sub-grantee also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

SECTION 3.2 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:

- (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. 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-contracts.

SECTION 3.3 Ineligible Bidders. Bidders or Suppliers whose names appear on the US Comptroller General's List located at <https://www.sam.gov/portal/public/SAM/> 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 the bidder 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 3.4 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 Planning Board, City of Great Falls, State or Federal Government in connection with this project, FTA reserves the right to pursue the procedures and impose on the Sub-grantee the penalties of 18 USC 1001, 31 USC 3801, as may be deemed by FTA to be appropriate.

SECTION 3.5 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 CFR Part 29, and otherwise comply with the requirements of those regulations a list of debarred entities is located at <https://www.sam.gov/portal/public/SAM/>.

SECTION 3.6 No State or Federal Obligations to Third Parties. The State shall not be subject to any obligations or liabilities to any third party, including the Sub-grantee, in connection with the performance of this Project 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 subcontract, or the solicitation thereof, nor any other act performed by the Planning Board or State under this Contract shall constitute such consent.

SECTION 3.7 Age Discrimination and ADA. The Sub-grantee agrees 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. The Sub-grantee also agrees 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 3.8 Federal Changes. 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 3.9 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 3.10 Incorporation of FTA Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. 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 3.11 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. The Sub-grantee understands that it is its responsibility to learn what federal, state and local laws and regulations will apply to its operation under this Contract, and that Sub-grantee is solely responsible for its lawful compliance, incorporated as Article 4.

SECTION 3.12 Drug and Alcohol Compliance. The Sub-grantee shall comply with USDOT Federal Transit Administration 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-grantee understands and agrees that failure to comply with this section constitutes default pursuant to Article 2, Section 2.1.

SECTION 3.13 Privacy Act. The Sub-grantee 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, the Sub-grantee agrees to obtain the express consent of the Federal Government before the Sub-grantee or its employees operate a system of records on behalf of the Federal Government. The Sub-grantee 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 3.14 Single Audit Act. The Sub-grantee shall perform an audit in compliance with the Single Audit Act Amendments of 1996, 31 USC 7501 et seq. and OMB Circular 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 all other grantees such as Tribal Communities and Non-Profit Organizations will provide the report to the Planning Board and State of Montana, Department of Transportation, Internal Audit Unit.

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.

**ARTICLE 4. NON-DISCRIMINATION NOTICE AND DISABILITY ACCOMMODATION NOTICE (hereinafter in this Article Sub-grantee is referred to as "the Party")**

Montana Department of Transportation ("MDT") is committed to conducting all of its business in an environment free of discrimination, harassment, and retaliation. In accordance with State and Federal law, MDT prohibits any and all discrimination on the grounds of race, color, national origin, sex, age, physical or mental disability, parental/marital status, pregnancy, religion/creed/culture, political belief, genetic material, veteran status, or social origin/ancestry (hereafter "protected classes") by its employees or anyone with whom MDT chooses to do business.

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. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
  - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
  - ii. Statement that 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 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, 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 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 Contract the PARTY assures 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. 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. § 200d *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.*).

*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 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.

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: Chairman

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