



Legal Update – Contract Road Map

TRANSIT TRAINING WORKSHOP

OCTOBER 1, 2015

INTRODUCTION



INTRODUCTION

- Read the Contract?
- Understood the Contract?
- Signed without reading?



WHY ARE THESE CONTRACTS SO COMPLICATED?



OVERALL ORGANIZATION

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If Moses had gone to Harvard Law School and spent three years working on the Hill, he would have written the Ten Commandments with three exceptions and a saving clause.

Charles Morgan

OVERALL ORGANIZATION

WHY ARE THESE CONTRACTS SO COMPLICATED?

- Dealing with both Federal and State government
- FTA grant federal funds
- Required federal language
- Required State language

OVERALL ORGANIZATION

SECTION 5311 OPERATING CONTRACT #108340
CFDA #20.509 - Formula Grants for Other Than Urbanized Areas

This contract is entered into between the State of Montana, DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, 2701 Prospect Avenue, PO Box 201001, Helena, Montana (State) and [Big Sky Transportation District, PO Box 174250, Bozeman, MT 59717](#) and DUNS #831352047 (Sub-recipient). Liaison for the State is David Jacobs, Transit Supervisor. Liaison for the sub-recipient is David Kack.

The State, having been allocated grant monies of \$9,966,436 from the Federal Transit Administration (FTA) under FAIN #MT-18-X057, through Section 5311 of the Federal Transit Act for the Federal Fiscal Year of 2015 (October 1, 2014 – September 30, 2015), as amended, and desiring to assist the sub-recipient, enters into the following contract with sub-recipient. Actual award is contingent upon the availability of FTA funding.

ARTICLE 1. PROJECT

SECTION 1.1 Purpose of Contract. This Contract provides operating assistance to the sub-recipient for public transportation in non-urbanized areas.

SECTION 1.2 Scope of Project. Sub-recipient shall operate a general public transportation system in accordance with the budget, goals and plans outlined in its SFY2016 application in accordance with the regulations of the FTA Section 5311 program. The sub-recipient shall use its best efforts to efficiently and economically complete the Project.

SECTION 1.3 Project Description. Reimbursement of operating expenses described in sub-recipient's application for the period July 1, 2015 through June 30, 2016.

SECTION 1.4 Period of Performance. This Contract will be effective from July 1, 2015 to June 30, 2016.

SECTION 1.5 Cost of Project. The total direct cost of the project shall be \$673,690.00. The direct costs of the Project are shared as follows:

Operating Assistance:			
	Federal Share @	54.11%	226,877.82
	Local Share @	45.89%	192,412.18
	Total		419,290.00
Administrative Assistance:			
	Federal Share @	80.00%	126,720.00
	Local Share @	20.00%	31,680.00
	Total		158,400.00
Preventative Maintenance:			
	Federal Share @	80.00%	76,800.00
	Local Share @	20.00%	19,200.00
	Total		96,000.00
Totals:			
	Federal Share		430,397.82
	Local Share		243,292.18
			673,690.00

OVERALL ORGANIZATION



SECTION 1 – INTRODUCTION

SECTION 2 – ARTICLE 1. PROJECT

SECTION 3 – ARTICLE 2. TERMS AND CONDITIONS

SECTION 4 – ARTICLE 3. FEDERAL REQUIREMENTS

SECTION 5 – SIGNATURE BLOCK

SECTIONS



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SECTION 1 - INTRODUCTION



National Archives and
Records Administration

code of
federal regulations

§200.331 Requirements for pass-through entities.

All pass-through entities must:

- (a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:
 - (1) Federal Award Identification.
 - (i) Subrecipient name (which must match the name associated with its unique entity identifier);
 - (ii) Subrecipient's unique entity identifier;
 - (iii) Federal Award Identification Number (FAIN);
 - (iv) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;
 - (v) Subaward Period of Performance Start and End Date;
 - (vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;
 - (vii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;
 - (viii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;
 - (ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
 - (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;
 - (xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;
 - (xii) Identification of whether the award is R&D; and
 - (xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).

SECTION 1 - INTRODUCTION

SO FAR SO GOOD.....

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			673,690.00

SECTION 2 – ARTICLE 1. PROJECT



For Grantee's claiming IDC for reimbursement, the IDC rate must be in accordance with the CFR cited below. A copy of the IDC approval letter from the agencies cognizant must be submitted to the Department and approved prior to any reimbursement. If the Montana Department of Transportation (MDT) is your organization's primary source of federal funds, then a copy of your indirect cost plan must be submitted to MDT for review and approval. The percentage rate for indirect costs shall be maintained for the life of the project.

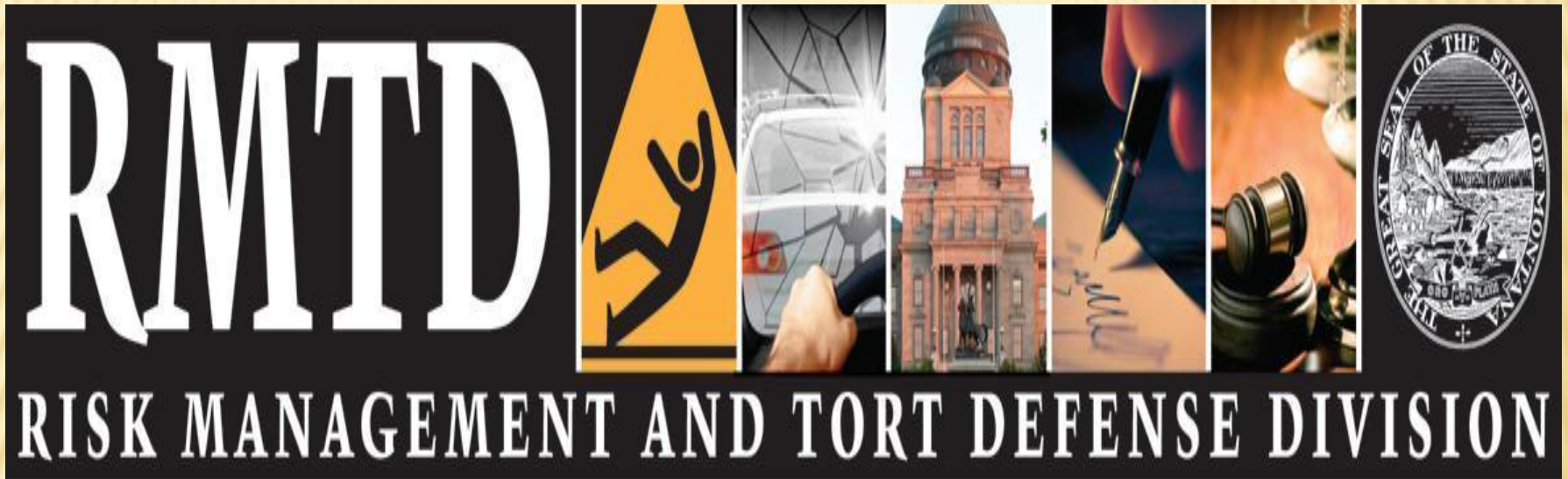
2 CFR Part 200.414 and Section E – Appendices III-VIII

SECTION 2 – ARTICLE 1. PROJECT



© Can Stock Photo - csp14621660

SECTION 3 – ARTICLE 2. TERMS AND CONDITIONS



SECTION 3 – ARTICLE 2. TERMS AND CONDITIONS



- Default
- Termination
- Close-out
- Venue
- Contract modification
- Assignment and Subcontracting
- Subcontracts
- Statement of Financial Assistance
- Indemnification
- Access and Retention of Records
- Notices
- Agency Assistance
- Severability and Integration
- Waivers

SECTION 3 – ARTICLE 2. TERMS AND CONDITIONS



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

SECTION 3 – ARTICLE 2. TERMS AND CONDITIONS



Contract Termination

SECTION 2.2 Termination. This Contract may be terminated by the State by serving a notice of termination on the sub-recipient. Termination may occur for either convenience or default. If termination is for convenience, the notice shall give the sub-recipient thirty days to wind down its activities under this Contract. If termination occurs due to default, the notice shall state the nature of the sub-recipient's default, and offer the sub-recipient an opportunity to explain its nonperformance. If the State finds that the sub-recipient has a reasonable excuse for nonperformance, which is beyond the control of the sub-recipient, 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. Sub-recipient shall account for any Project property in its possession.

SECTION 3 – ARTICLE 2. TERMS AND CONDITIONS



SECTION 2.8 Subcontracts. The sub-recipient 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 sub-recipient shall include the following provisions in any advertisement or invitation to bid for any procurement under this Agreement:

SECTION 3 – ARTICLE 2. TERMS AND CONDITIONS



SECTION 2.10 Indemnification. The sub-recipient 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 arising or resulting from the performance of this Contract.

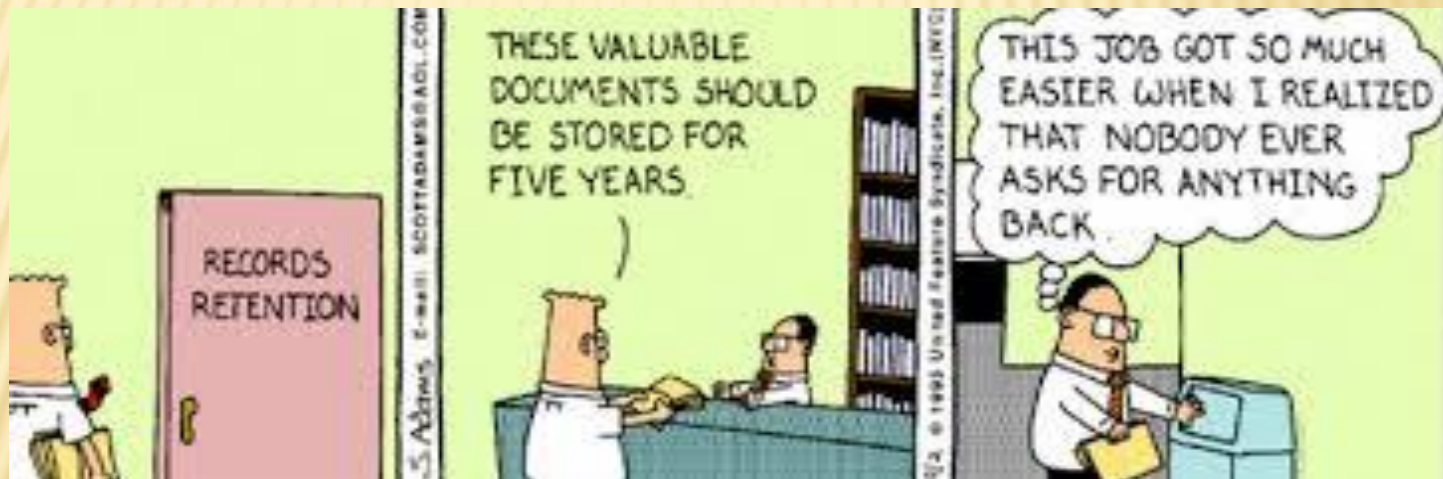
SECTION 3 – ARTICLE 2. TERMS AND CONDITIONS



SECTION 2.11 Access and Retention of Records. The sub-recipient agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine compliance with this Agreement. The sub-recipient 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 3 – ARTICLE 2. TERMS AND CONDITIONS

Does this really happen.....?



SECTION 3 – ARTICLE 2. TERMS AND CONDITIONS



Federal Transit
Administration

TRANSIT SAFETY & OVERSIGHT



SECTION 4 – ARTICLE 3. FEDERAL REQUIREMENTS

Requirements



ARTICLE 3. FEDERAL REQUIREMENTS

SECTION 3.1 FTA Master Agreement. The sub-recipient understands 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-recipient or its project. A comprehensive list of those Federal laws, regulations and directives is contained in the current FTA Master Agreement MA(21) at the FTA website <http://www.fta.dot.gov/documents/21-Master.pdf>. The clauses in this contract have been streamlined to highlight the most prevalent regulations that govern this award, however additional Federal laws, regulations and directives contained in the Master Agreement will apply. The sub-recipient's signature upon this document acknowledges they have read and understand the Master Agreement

The sub-recipient also agrees to include FTA Master Agreement 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 4 – ARTICLE 3. FEDERAL REQUIREMENTS



SECTION 3.2 Prohibited Interest. No employee, officer, board member or agent of the sub-recipient shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

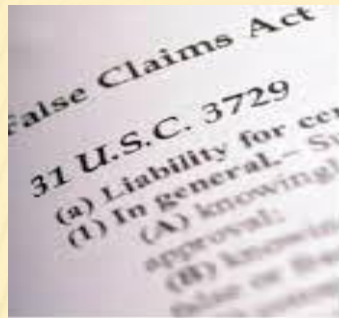
- (1) The employee, officer, board member or agent;
- (2) Any member of his or her immediate family;
- (3) His or her partner; or
- (4) An organization which employs, or is about to employ any of the above; has a financial or other interest in the firm selected for award. The sub-recipient's employees, officers, board members or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of sub-agreements.

SECTION 4 – ARTICLE 3. FEDERAL REQUIREMENTS



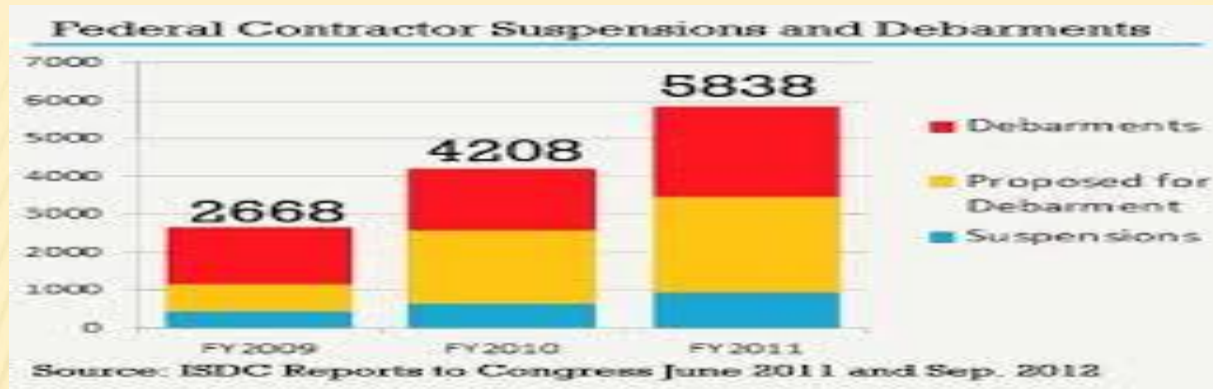
SECTION 3.3 Ineligible Bidders. Bidders or Suppliers whose names appear on the US Comptroller General's List located at <https://www.sam.gov/portal/public/SAM/> of Ineligible Contractors are not eligible for award of, or participation in, any contract that may be awarded as a result of this agreement. Submission of a bid by any bidder constitutes certification that the bidder or any subcontractor or suppliers to the bidder, 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 4 – ARTICLE 3. FEDERAL REQUIREMENTS



SECTION 3.4 False or Fraudulent Statements or Claims. Sub-recipient acknowledges that, should it make a false, fictitious, or fraudulent claim, statement, submission, or certification to the State or Federal Government in connection with this project, FTA reserves the right to pursue the procedures and impose on the sub-recipient the penalties of 18 USC 1001, 31 USC 3801, as may be deemed by FTA to be appropriate.

SECTION 4 – ARTICLE 3. FEDERAL REQUIREMENTS



SECTION 3.5 Debarment and Suspension. Sub-recipient 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 4 – ARTICLE 3. FEDERAL REQUIREMENTS



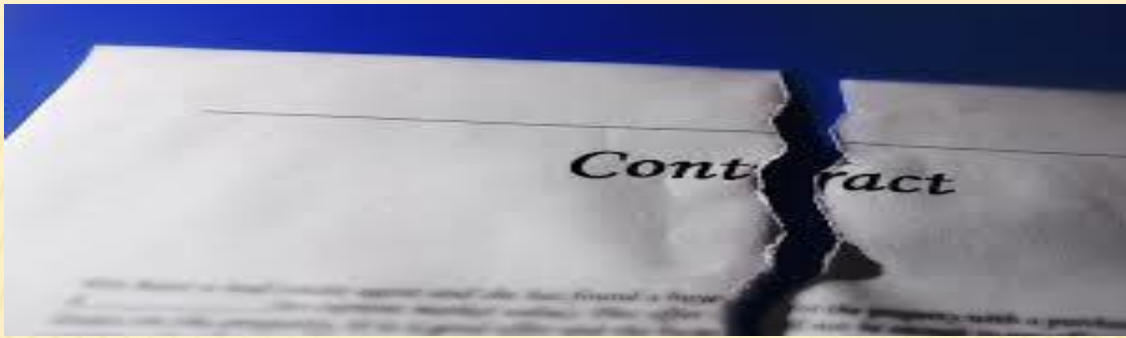
SECTION 3.7 Age Discrimination and ADA. Sub-recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, Title 42 USC Chapter 76 Section 6101 *et seq.*, and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age. The sub-recipient 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 4 – ARTICLE 3. FEDERAL REQUIREMENTS



SECTION 3.8 Charter Service Operations. Sub-recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 USC chapter 53 or under 23 USC §§ 133 or 142 will engage in charter service operations, except as authorized by 49 USC § 5323(d) and FTA regulations, “Charter Service,” 49 CFR Part 604, and any subsequent Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any charter service agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The sub-recipient understands and agrees that in addition to any remedy specified in the charter service agreement, if a pattern of violations of that agreement is found, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or USDOT.

SECTION 4 – ARTICLE 3. FEDERAL REQUIREMENTS



SECTION 3.10 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 sub-recipient and its subcontractor in which the sub-recipient 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-recipient shall avail itself of all legal rights available under any third party contract. The sub-recipient shall notify the State of any current or prospective litigation or major disputed claim pertaining to any third party contract. FTA reserves the right to concur in any compromise or settlement of the sub-recipient's claim(s) involving any third party contract, before making Federal assistance available to support that settlement. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the Project account involved unless FTA permits otherwise.

SECTION 4 – ARTICLE 3. FEDERAL REQUIREMENTS



SECTION 3.12 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-recipient 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-recipient is solely responsible for its lawful compliance with all laws and regulations, including those attached hereto as Attachment A.

SECTION 4 – ARTICLE 3. FEDERAL REQUIREMENTS



ATTACHMENT A
MDT NONDISCRIMINATION
AND
DISABILITY ACCOMMODATION NOTICE

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).

SECTION 4 – ARTICLE 3. FEDERAL REQUIREMENTS



SECTION 3.13 Drug and Alcohol Compliance. The Sub-recipient 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-recipient understands and agrees that failure to comply with this section constitutes default pursuant to Article 2, Section 2.1.

SECTION 4 – ARTICLE 3. FEDERAL REQUIREMENTS



SECTION 3.15 Single Audit Act. Sub-recipient may be subject to the audit requirements of 2 CFR 200 Subpart F if the audit threshold in 2 CFR 200.501 of \$750,000 is met. An audit must be conducted in compliance with 2 CFR 200 Subpart F if required. The audit must be completed and the data collection form and reporting package submitted to the Federal Audit Clearinghouse within the earlier of 30 calendar days after the receipt of the auditor's report(s) or nine months after the end of the audit period. For local governments and school districts, the Subrecipient will provide the report to the State of Montana, Department of Administration, Local Government Services Bureau. All other Subrecipients such as Tribal Communities and Non-Profit Organizations will provide the report to the State of Montana, Department of Transportation, Audit Services if audit findings are discovered.

SECTION 4 – ARTICLE 3. FEDERAL REQUIREMENTS



SECTION 3.16 Coordination. Sub-recipient of any capital project purchased through this program certifies: (1) the projects selected were derived from a locally developed and coordinated public transit and human services transportation plan; (2) the plan was developed through a process that included representatives of public, private and nonprofit transportation and human services providers as well as the general public; and (3) vehicle use and location is identified in the planning document and will not be altered without the prior written permission of the Montana Department of Transportation. Should the recipient of any capital project withdraw from the coordinated plan, the ownership of any vehicle purchased under the plan shall revert back to the State or the State will be reimbursed full cost of the capital.

SECTION 4 – ARTICLE 3. FEDERAL REQUIREMENTS

A close-up photograph of a handwritten signature in cursive script. The signature reads "John Hancock" and is written in dark ink on a piece of aged, yellowish-brown paper. The paper shows signs of wear, including small brown spots and a slightly textured surface. The signature is elegant, with a large, flowing 'J' and a decorative flourish at the end of the word "Hancock".

SECTION 5 – SIGNATURE BLOCK

Signature and View **AUTHORITY**

The SUB-RECIPIENT 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 sub-recipient has been lawfully delegated the authority to sign this Agreement on behalf of sub-recipient.

SECTION 5 – SIGNATURE BLOCK



**STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION**

By: _____
Lynn Zanto, Administrator
MDT-Rail, Transit and Planning Division

Dated: _____ 20__

APPROVED FOR CIVIL RIGHTS CONTENT

By: _____

Date: _____ 20__
MDT Civil Rights Bureau

APPROVED FOR LEGAL CONTENT

By: _____

Date: _____ 20__
MDT Legal Services

**BIG SKY TRANSPORTATION
DISTRICT**

By: _____

Printed Name: _____

Title: _____

Dated: _____ 20__

SUB-RECIPIENT ATTORNEY (optional)

By: _____

Date: _____ 20__

SECTION 5 – SIGNATURE BLOCK



- Requirements and Conditions
- Reviewed and revised every year
- Grantee must read and understand
- Grantee must agree
- Grantee must read before signing

CONCLUSION



CONCLUSION