



**To:** Board of Directors  
**From:** Frank Kuhl  
**Meeting Date:** July 24, 2025

**Attachments**

1. Cushing Terrell Proposal
2. Cushing Terrell Draft Contract

**Agenda Item:** 5.5 Commissioning Agent Services Contract with Cushing Terrell

**Recommendation:** Authorize the CEO & GM to sign a contract for commissioning services with Cushing Terrell to secure a LEED certification at the new facility.

**Discussion:** The agency received three proposals in response to the request for proposals for commissioning agent services that closed on June 27, 2025. The internal selection committee selected Cushing Terrell as the best candidate based on a thorough review. During the interview in the proposal, Cushing Terrell demonstrated superior experience and knowledge and proposed the lowest price.

**Financial Impact:** The price proposal is broken down into three sections. Option One, Baseline Services, is \$70,122. Option One, Path 2, Enhanced and Monitoring Based Commissioning, is an additional \$13,400. Finally, Option 2, Building Enclosure Commissioning, is an additional \$26,840. The total is \$117,332 and accounts for estimated reimbursable expenses.

**DBE-Certified Vendor – NA**

*Where design  
meets you.*

# MISSOULA URBAN TRANSPORTATION DISTRICT (MUTD)

REQUEST FOR PROPOSALS  
**Commissioning Agent**  
**REP 25-02**

June 27, 2025

Cushing  
Terrell



# Letter of Transmittal





June 27, 2025

Missoula Urban Transportation District  
Frank Kuhl  
Procurement and Contracts Specialist  
1221 Shakespeare St, Missoula, MT 59802  
fkuhl@mountainline.com  
406.215.2468

**RE: New Building Commissioning Services**

Dear Frank and Members of the Selection Committee,

Building Commissioning Services for the Missoula Urban Transportation District's Operations and Maintenance Facility is a necessary effort for the Missoula community—and our team would be honored to provide our services to ensure that your goals are met and exceed your expectations. Cushing Terrell, formerly known as CTA Architects Engineers, was founded in 1938 and offers decades of experience providing commissioning services through our Energy Services Group to local governments and municipal institutions throughout Montana and the Rocky Mountain West.

Cushing Terrell's Energy Services Group also performs modeling to assist with equipment selection and building energy usage. We have a history of providing Commissioning Services for several LEED-certified projects. Our experienced team of Building Commissioning Professionals is ready to work with you and your team to deliver an exceptional project.

Our Energy Services Group is dedicated to working on new and existing building commissioning on a full-time basis. While we have the support of our 500+ person architecture and engineering firm, the key personnel of our commissioning team can focus on their specialized work while keeping our client's best interests at the forefront of our minds.

Cushing Terrell is ready to begin work immediately on pre-construction commissioning duties and to support the initial design phases of this long awaited and important project. Additionally, we never consider any project complete and prosperous until the maintenance staff has received thorough training and understands all aspects of the new systems. Cushing Terrell will participate in the training and help facilitate discussions to achieve a comprehensive understanding of the building systems. You can trust that Cushing Terrell will be committed to the success of this effort from the outset, through construction, and beyond.

Cushing Terrell acknowledges receipt of addendum #1. This proposal shall remain valid for a period of not less than 90 days from the date of submittal.

We look forward to the opportunity to work with you.

Sincerely,

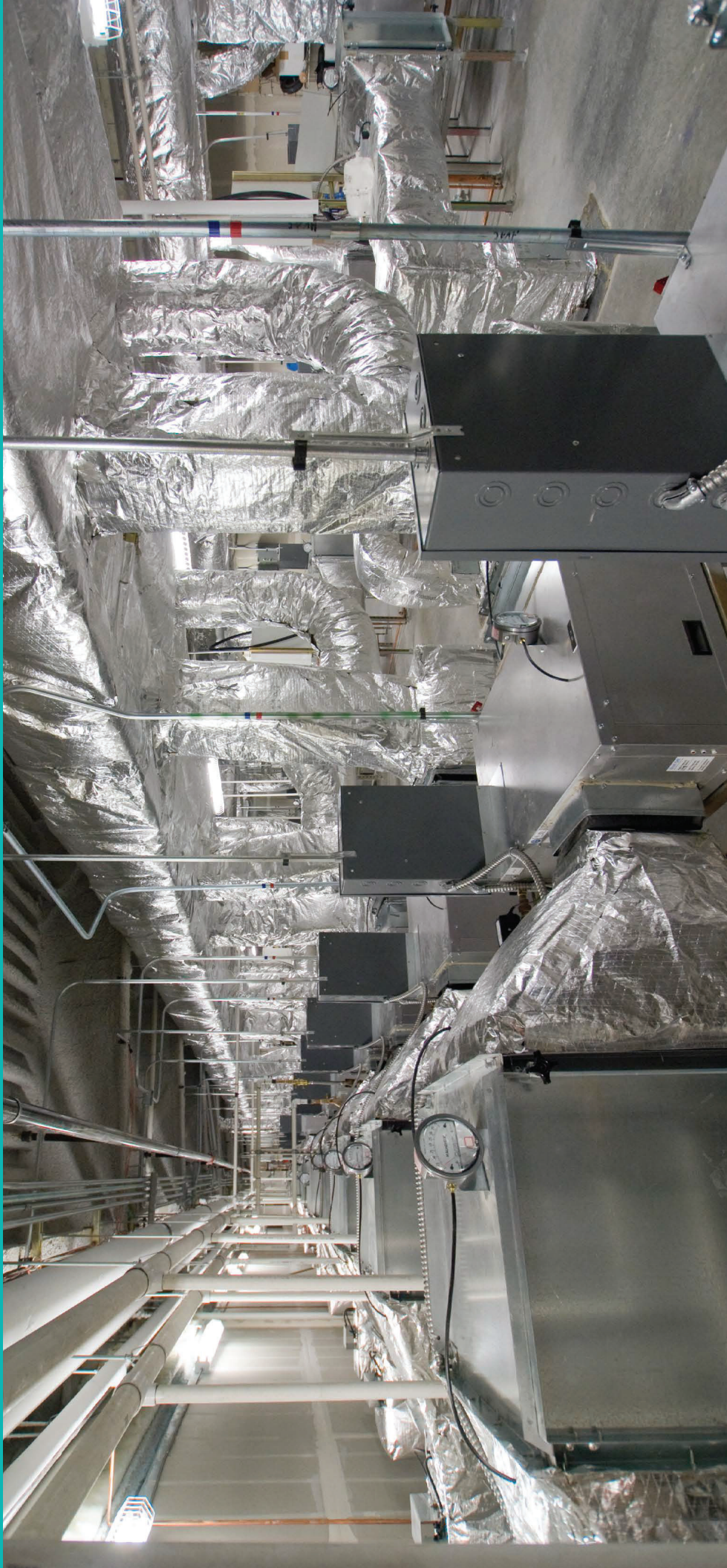
**Alan Bronec**, PE  
Principal-in-Charge | Authorized Representative  
AlanBronec@cushingterrell.com | 406.258.7313

**Matt Scofield**, CCP, BEAP  
Commissioning Manager  
MattScofield@cushingterrell.com | 406.896.6222

306 Railroad St W #104 | Missoula, MT 59802 | 406.728.9522



# Technical Proposal





## Qualifications of Firm

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As an integrated firm of architects, engineers, and designers, our mission is to utilize our expertise and creativity to serve our clients, enlightening, sustaining, delighting, and continually improving to shape a brighter future for the world. Through a culture of openness, honesty, and trust, we at Cushing Terrell take collective responsibility for one another and our world. We recognize that our success begins with hiring talented employees and empowering them to share ideas, collaborate, and perform at their best.

Our approach to leadership is grounded in a servant-leadership model, as we support our project teams to ensure their triumph, ultimately leading to successful outcomes for our clients. By promoting an environment where our employees thrive, they are better equipped to fully dedicate themselves to understanding and realizing our clients' aspirations, making them a reality. Our unwavering commitment is to serve our clients with the care and attention we would expect if we were in their shoes.

### Values

At Cushing Terrell, we believe that successful, holistic, integrated design requires more than just adhering to best professional practices - it is firmly grounded in our values. This includes:

**Be kind.** We emphasize integrity, compassion, and understanding, founded on the Golden Rule.

**Work together.** Diversity + collaboration = creative solutions.

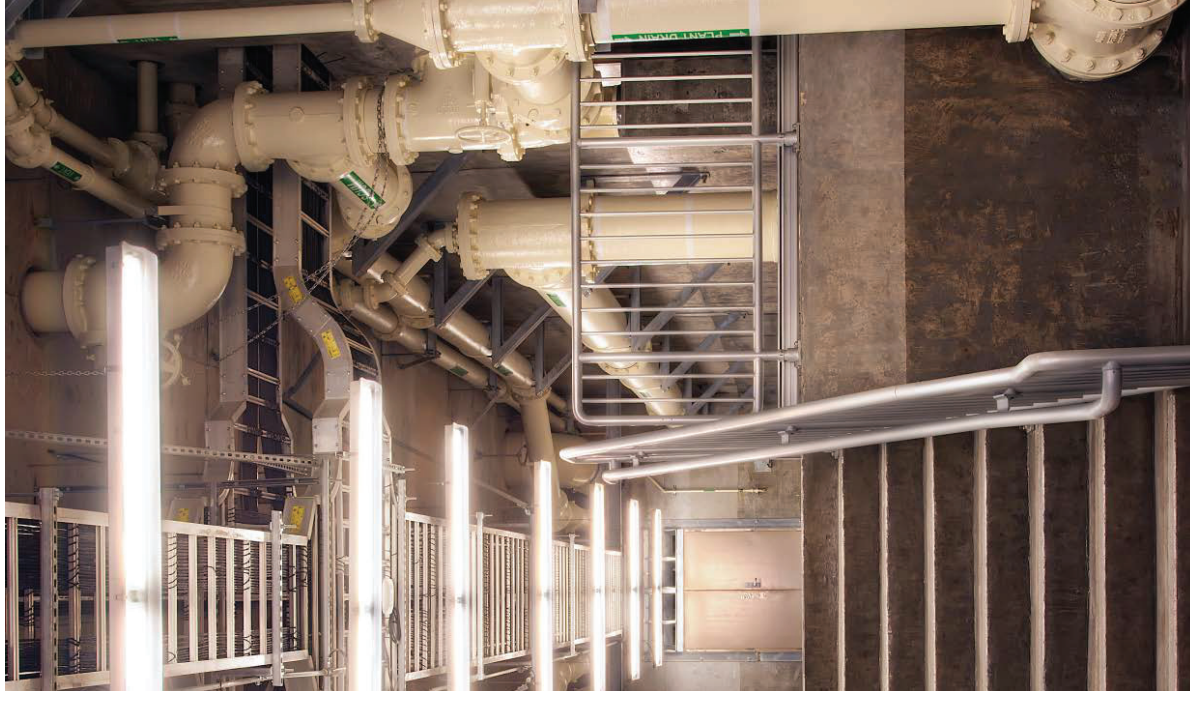
**Listen.** Unique clients inspire unique projects — we're here to listen and learn.

**Share success.** We seek partnerships where the client, the community, the planet, and Cushing Terrell all win.

**Think responsibly.** We recognize that what is good for the earth is good for our clients.

**Have fun.** We take our work seriously, but not ourselves.

CUSHING TERRELL







## By the Numbers

500+  
team members

1.3B  
annual construction volume

86  
years in business

100+  
green-certified projects since 2005

17  
office locations

1  
client-driven mission

# What We Do

To learn more, visit:  
[cushingterrell.com/services](https://cushingterrell.com/services)



## DESIGN

ARCHITECTURE  
BUILDING ENCLOSURE DESIGN  
CONSTRUCTION ADMINISTRATION  
GRAPHIC DESIGN AND WAYFINDING  
HISTORIC PRESERVATION  
INTERIOR DESIGN  
LANDSCAPE ARCHITECTURE  
LIGHTING DESIGN  
URBAN PLANNING  
VISUALIZATION



## ENGINEERING

### BUILDING COMMISSIONING


CIVIL ENGINEERING  
ELECTRICAL ENGINEERING  
ENERGY SOLUTIONS  
FIRE PROTECTION  
MECHANICAL ENGINEERING  
MICROGRID DESIGN  
PLUMBING DESIGN  
REFRIGERATION ENGINEERING  
STRUCTURAL ENGINEERING



## SUSTAINABILITY

BUILDING PERFORMANCE  
DECARBONIZATION  
ELECTRIFICATION STUDIES  
ENERGY SERVICES  
ESG PROGRAM SUPPORT  
GREEN BUILDING CERTIFICATIONS  
HEALTH, WELLNESS, AND SOCIAL IMPACT



 *Our vision for sustainable design is a balance between the built and natural environments that will provide a healthy future for our clients, colleagues, and communities. Our mission is to contribute to this balance by making sustainability a foundation of our design and business operations.*



To learn more, visit:  
[cushingterrell.com/sustainability](https://cushingterrell.com/sustainability)

## Sustainability

Cushing Terrell believes in holistic environments that maximize systems and synergies and minimize environmental impacts while protecting the health and well-being of the people who occupy them. Leveraging an integrated design process, our experienced professionals are committed to a wide range of affiliations and organizations advancing sustainable design practices.

### Affiliations

#### AIA 2030 Commitment

Cushing Terrell is a proud signatory of the AIA 2030 Commitment to achieve carbon-neutral buildings by 2030.

#### SME Climate Commitment

Cushing Terrell is a member of a small- and medium-sized enterprise (SMEs) collective pledging to adhere to the SME Climate Commitment initiative.

#### MEP 2040 Commitment

Cushing Terrell is proud to participate in the MEP 2040 Commitment, an initiative dedicated to reducing carbon emissions from mechanical, electrical, and plumbing (MEP) systems in buildings. By joining this commitment, we are actively contributing to the global effort to combat climate change while also benefiting from improved efficiency and innovation in our projects.

## Taking Responsibility

ACOUSTIC DESIGN STRATEGIES  
BIOPHILIC DESIGN  
BUILDING COMMISSIONING  
BUILDING ENCLOSURE CONSULTING  
BUILDING PERFORMANCE ANALYSIS  
ENERGY SERVICES  
HAZARD ASSESSMENT AND MITIGATION  
HEALTHY INDOOR AIR STRATEGIES  
HEALTHY MATERIAL SELECTIONS  
NET-ZERO / HIGH-PERFORMANCE DESIGN  
POST OCCUPANCY EVALUATIONS  
SENSITIVE SITE DESIGN  
THIRD-PARTY BUILDING CERTIFICATION  
UTILITY INCENTIVES AND ENERGY AUDITS

Proud signatory of the **AIA 2030 Commitment** and the **MEP 2040 Commitment**.



## Key Personnel

Our team is ready and committed to support MUTD in successfully implementing your facilities expansion. Many of our proposed team members worked directly with MUTD on previous projects, providing immediate efficiency and consistency to expedite design. Our team's combined local and national experience means we understand jurisdictional priorities and can quickly mobilize the right resources necessary to drive the project to success.



**Alan Bronec** | [Principal-in-Charge](#)

**Benefit to MUTD:** Alan brings over 30 years of expertise in electrical engineering, providing MUTD with advanced knowledge in power generation, distribution, and energy efficient solutions, including electric microgrids and vehicle charging infrastructure, ensuring the facility's electrical systems are reliable, cost-effective, and future-ready. His knowledge gained working with Mountain Line over the past 7 years will be key in creating energy-efficient, robust, and cost-effective electrical solutions for the new facility.



**Matt Scofield** | [Commissioning Agent](#)

**Benefit to MUTD:** Matt offers MUTD over a decade of hands-on commissioning experience, leading energy audits and building commissioning with a collaborative and detail-oriented approach. He will apply his expertise in mechanical and fire systems to verify that all building systems meet LEED v4.1 requirements and perform optimally throughout design, construction, and closeout.



**John Tobol** | [Commissioning Technician](#)

**Benefit to MUTD:** Contributes his 30 years of plumbing and commissioning experience, delivering innovative solutions and exceptional supervision on complex projects, which ensures MUTD's building systems are commissioned for maximum efficiency, reliability, and long-term value.



**Patrick Todd** | [Roofing and Building Envelope Specialist](#)

**Benefit to MUTD:** Provides MUTD with unmatched expertise in roofing and building enclosure consulting, leveraging his extensive field and consulting experience on thousands of government and commercial projects. He will draw on his decades of roofing and enclosure consulting to ensure the facility's envelope meets performance, durability, and LEED v4.1 standards.



**Brady Gauer** | [Building Envelope Commissioning](#)

**Benefit to MUTD:** Enhances MUTD's project with his comprehensive knowledge of roofing and building envelope systems, collaborating closely with engineers and architects to integrate robust exterior cladding, waterproofing, insulation, and barrier solutions that protect the facility and support its long-term performance.





Office Location: Missoula



#### Professional Registration

Engineer / AK, AL, AR, AZ, CA, CO, GA, HI, ID, MT, NC, NE, NJ, NM, NV, NY, OR, PA, TX, UT, WI



#### Affiliations

National Council of Examiners for Engineering and Surveying (NCEES)



#### Education

Bachelor of Science, Electrical and Electronic Engineering Technology, Montana State University

# Alan Bronec

PE | LEED AP

## PRINCIPAL-IN-CHARGE | DIRECTOR OF INFRASTRUCTURE VERTICAL MARKET

Alan is a highly experienced Electrical Engineer, Principal, and Director of Electrical Engineering for Cushing Terrell with over 30 years of experience designing and managing electrical projects for commercial, educational, medical, industrial, retail, and institutional facilities. He is well-versed in power generation and distribution, fire alarm systems, power quality, and electrical systems for mission-critical facilities. In addition, Alan is an expert in designing electric microgrids that include solar PV systems, vehicle charging stations, and battery storage systems. He holds multiple professional engineering licenses and provides exceptional consultation and guidance to architects, developers, and construction teams. Notably, Alan is an expert in creating energy-efficient and cost-effective solutions.

## Relevant Experience

**MUTD, Mountain Line MOAB Electrical Infrastructure; Missoula, MT**

**MUTD, Operations Center Electrical Upgrades; Missoula, MT**

**Peak Mining Data Center Commissioning for the Cooling System and Electrical System Evaluations; Corpus Christi TX**

**GS Management Energy Audits, BESO Requirements; Berkeley, CA**

**Montana School Board Association Chiller Replacement; Helena, MT**

**Stockman Bank Downtown, LEED Platinum; Missoula, MT**

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Office Location: Billings



#### Professional Registration

Certified Commissioning Professional (CCP) Building Energy Assessment Professional (BEAP)



#### Affiliations

Building Commissioning Association  
American Society of Heating, Refrigeration,  
and Air Conditioning Engineers (ASHRAE)



#### Education

Bachelor of Science in Mechanical Engineering Technology,  
Montana State University

# Matt Scofield

CCP | BEAP

## PROJECT MANAGER | COMMISSIONING AGENT

Matt is a highly experienced Lead Commissioning Agent and commissioning team manager at Cushing Terrell. With over a decade of professional experience in mechanical systems and fire systems review and testing, Matt has led energy audits, building tuneups, new building commissioning, existing building commissioning, retro-commissioning, and fire suppression system design. He is a Certified Commissioning Provider (BCA) and a Certified Building Energy Assessment Professional (BEAP), recognized for his thorough field experience and collaborative approach with project teams and stakeholders.

## Relevant Experience

### NorthWestern Energy Headquarters Building; Butte, MT

*Commissioning and LEED*

### Bureau of Land Management Fort Howes Fire Station; Ashland, MT

*Commissioning*

### MSU Billings Life Science Building; Billings MT

*Commissioning and LEED*

### Montana Capital Boiler Plant; Helena, MT

*Commissioning*

### Southeastern Grocers; Multiple Locations, Florida

*HVAC Commissioning*

### MSU College of Nursing, 5 New Nursing Centers; Multiple Montana Locations

*Commissioning and LEED*

### Scott Hart Building HVAC Upgrade; Helena, MT

*HVAC System Upgrade Commissioning*

### Little Big Horn College; Crow Agency, MT

*ASHRAE Level 2 Energy Audit*

### MSU Wellness Center; Bozeman, MT

*Commissioning and LEED*

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MUTD COMMISSIONING SERVICES





Office Location: Helena



#### Professional Registration

State of MT Journeyman Plumber  
State of MT Medical Gas Installer  
NITC Medical Gas Instructor



#### Education

Helena Vo-Tech, Industrial Electronics; University of Montana  
Local 411, 5-year journeyman plumber training; University of  
Michigan Ann Arbor, Medical Gas

# John Tobol

## COMMISSIONING TECHNICIAN

John is a Commissioning Technician at Cushing Terrell with 30 years of experience in the plumbing field, including five years dedicated to commissioning. John's expertise spans a diverse range of projects, from hydroelectric dams and HVAC plants to large multipurpose buildings, science labs, medical facilities, and high-rise buildings. He is recognized for his leadership in supervising complex jobs and for his talent and passion in finding innovative design solutions that enhance the commissioning process. John's approach consistently exceeds client expectations and maximizes value, ensuring that building systems perform efficiently and reliably.

## Relevant Experience

### MSU Billings Life Science Building; Billings MT

*Commissioning and LEED*

### Montana State University, Romney Hall Renovation, Commissioning; Bozeman, MT

### MSU Wellness Center; Bozeman, MT

*Commissioning and LEED*

### MSU Gianforte Hall, Building Envelope Commissioning; Bozeman, MT

*Commissioning and LEED Silver*

### Cheyenne Regional Medical Center; Cheyenne, WY

### Montana Mental Healthcare HVAC Renovation; Lewistown, MT

### MSU College of Nursing, 5 New Nursing Centers; Multiple Montana Locations

*Commissioning and LEED*

### Dell Technologies, HVAC plant; Austin, TX

### Dell Technologies, RR5 server room; Round Rock, TX

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Office Location: Billings



#### Affiliations

Construction Specification Institute (CSI)



#### Education

Construction Engineering, Montana State University

# Patrick Todd

## ROOFING AND BUILDING ENVELOPE SPECIALIST

Pat has been involved in the roofing and building enclosure industry for over 30 years and brings valuable past experience working as a roofing and sheet metal technician/ installer. Using his real-world field experience and sharp attention to detail, he quickly transitioned into the role of roofing and building enclosure consultant. Pat spent 20 years performing roof consulting services on over 60 million sq. ft. of government installations throughout the US and 40 million sq. ft. of roofing on Boeing Company facilities throughout the Western United States.

## Relevant Experience

**MSU Billings Life Science Building; Billings, MT**  
*Commissioning and LEED Gold*

**MSU Wellness Center; Bozeman, MT**  
*Commissioning and LEED Gold*

**Limited Army Aviation Support Facility, Hangar/Office Space Commissioning; Billings, MT**  
*Commissioning and LEED Silver*

**MSU Gianforte Hall, Building Envelope Commissioning; Bozeman, MT**  
*Commissioning and LEED Silver*

**Billings School District 2, District-wide Roof Replacements; Billings, MT**

**Metra Park, Rimrock Auto Arena Roof Replacement; Billings, MT**

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Office Location: Billings



#### Professional Registration

Building Enclosure Commissioning Process Provider, BEC&P  
Commissioning Authority+Building Enclosure, CxA+BE



#### Affiliations

BCxA - Building Commissioning Association, Northwest Chapter  
Montana DEQ, Certified Asbestos Inspector Engineer-In-Training, State of Montana



#### Education

Bachelor of Science in Construction Engineering Technology, Montana State University

# Brady Gauer

BEC&P

## BUILDING ENVELOPE COMMISSIONING

Brady has 12 years of experience in the professional roofing and building envelope industry. He was previously an operations manager for a commercial roofing contractor in Montana. At Cushing Terrell, Brady has expanded his expertise beyond roofing to include all aspects of a building's exterior envelope system. He works closely with engineers and architects to ensure that building design at Cushing Terrell incorporates appropriate systems for exterior wall cladding, waterproofing, insulation, and barrier systems.

## Relevant Experience

### MSU Billings Life Science Building; Billings MT

*Commissioning and LEED*

### Limited Army Aviation Support Facility, Hangar/Office Space

#### Commissioning; Billings, MT

*Commissioning and LEED Silver*

### MSU Gianforte Hall, Building Envelope Commissioning; Bozeman, MT

*Commissioning and LEED Silver*

### MSU Wellness Center; Bozeman, MT

*Commissioning and LEED Gold*

### MSU College of Nursing, 5 New Nursing Centers; Multiple Montana

#### Locations

*Commissioning and LEED*

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CUSHING TERRELL

MUTD COMMISSIONING SERVICES



Cushing Terrell has not had any disciplinary action taken against them during the past three years with state regulatory bodies or professional organizations.

# Building Commissioning Certification Board

CONFERRED UPON

## Matthew Scofield

THE DESIGNATION OF

### Certified Commissioning Professional (CCP)

The CCP certification is an ANSI National Accreditation Board (ANAB) Accreditation under the ANSI/ISO/IEC 17024:2013 Standard. Registration #: 1191

FOR DEMONSTRATING A HIGH LEVEL OF COMPETENCE AND EXPERIENCE FOR THE BUILDING COMMISSIONING PROCESS BY SUCCESSFULLY COMPLETING AN EXAMINATION, DOCUMENTING PROFESSIONAL AND EDUCATION ACHIEVEMENTS AND FULFILLING PRESCRIBED STANDARDS OF PERFORMANCE AND CONDUCT REQUIRED FOR CCP.



PRESIDENT



CERTIFICATION DIRECTOR

ISSUE DATE 08/07/2023

EXPIRES ON 09/30/2026

CCP # 689



Building Commissioning Certification Board



ANSI National Accreditation Board  
ACCREDITED  
PROFESSORIAL BODY



Better Buildings  
BUILDING PERFORMANCE PARTNERSHIP



Certified Commissioning Professional

To verify the authenticity of this certificate, visit the BCCB online registry at [bccbonline.org/ccp](http://bccbonline.org/ccp)

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Required  
Certifications



**WISCONSIN**  
UNIVERSITY OF WISCONSIN-MADISON

The College of Engineering and Interdisciplinary Professional Programs  
proudly present to

**BRADY GAUER**

this certificate for successful completion of all requirements for

*Certificate as Accredited*

**Building Enclosure Commissioning Process Provider and  
Commissioning Authority+Building Enclosure**

with the designation of

**BECxP and CxA+BE**

valid until December 31, 2027



Edward G. Bethody, Associate Dean



Jay E. Altus, Committee Member



Tim McInerney, Committee Member

## Past Performance and Quality of Services

The Cushing Terrell team includes qualified professionals with decades of experience in commissioning, electrical engineering, mechanical systems, plumbing, and building envelope consulting for a wide range of facility types, including commercial, educational, medical, industrial, and institutional projects.

### Key highlights of Cushing Terrell's relevant experience and past performance:

- The team has led and completed new building commissioning, existing building commissioning, retro-commissioning, and energy audits for complex facilities, ensuring compliance with LEED and other high-performance standards.
- Cushing Terrell's commissioning professionals have managed projects involving advanced electrical systems, renewable energy integration (such as solar PV and battery storage), and electric vehicle charging infrastructure—directly aligning with MUTD's project requirements.
- Our portfolio includes successful commissioning and consulting for large-scale projects such as university renovations, medical centers, HVAC plants, and multifamily and multipurpose buildings, demonstrating the ability to deliver on projects of similar scope and complexity.

- Our building envelope and roofing team members have provided services for millions of sq. ft. of government and commercial facilities, ensuring high-quality, durable, and energy-efficient building enclosures.
- The team's collaborative approach and history of exceeding client expectations are evidenced by their long-standing relationships and repeat work with public agencies and institutional clients.

This depth of experience positions Cushing Terrell to effectively meet MUTD's commissioning needs for the Operations and Maintenance Facility, ensuring all systems are designed, installed, and perform to the highest standards.







## NorthWestern Energy, Headquarters Building BUTTE, MT

Cushing Terrell provided comprehensive MEP commissioning services for the new NorthWestern Energy Headquarters Building, located in uptown Butte, Montana, at the corner of Park and Main. This five-story, 100,000 sq. ft. facility includes a basement level and was designed with energy conservation as a top priority, ultimately achieving LEED-Gold certification.

The commissioning scope addressed several advanced building systems and sustainability features. Key requirements included partial backup power with the potential for generator reuse, lighting controls integrated with daylighting, and a study comparing access floor/displacement ventilation to traditional ceiling ductwork/diffuser supply systems. Additionally, the project incorporated a small demonstration renewable energy system to further support NorthWestern Energy's commitment to sustainability.

Cushing Terrell's commissioning process ensured that all building systems were installed and operated according to the owner's requirements, supporting the building's high efficiency and long-term performance goals.

*Commissioning and LEED Gold*

*Contact*

John Habeger | Facility Manager  
406.497.2571

[john.habeger@northwestern.com](mailto:john.habeger@northwestern.com)

**Cushing  
Terrell.**





# Montana State University, Billings

## Life Sciences Building

BILLINGS, MT

Cushing Terrell provided full building commissioning services for MSU Billings Life Sciences Building, a facility dedicated to the university's Life Sciences disciplines, including biology, chemistry, and plant growth. The project involved the renovation and expansion of an existing 31,709 sq. ft. building, complemented by a new 51,261 sq. ft. addition, resulting in a total of approximately 83,000 sq. ft. The building is in the process of becoming LEED certified, reflecting a strong commitment to sustainability.

Commissioning services encompassed the HVAC, domestic hot water, lighting, and building automation systems (BAS). The HVAC system features multiple fume hoods connected to the exhaust system, air handling units, chillers, and associated components. Given the building's numerous laboratories, air changes are closely monitored through supply and exhaust air valves (Antec) to ensure a safe and effective environment for research and learning.

Cushing Terrell also performed building envelope commissioning for the new addition, which included the roof, foundation, windows, vapor barrier, and siding. This comprehensive approach ensured that all systems and components were installed and operated in accordance with the owner's requirements, supporting the building's high efficiency and long-term performance.

*Commissioning and LEED Gold*

### Contact

**Cody Mitchell**  
State of Montana  
406.444.3326  
[comitchell@mt.gov](mailto:comitchell@mt.gov)

**Cushing  
Terrell.**



## BLM Fort Howes Fire Station

ASHLAND, MT

Cushing Terrell provided full building commissioning services for the new Bureau of Land Management Fort Howes Fire Station. This two-story, 7,195 sq. ft. facility was designed with energy conservation as a priority and achieved LEED certification. The building features a backup generator, lighting controls integrated with daylighting, and energy-efficient heat pump units.

Cushing Terrell's commissioning process ensured that all systems were installed and operated according to the owner's requirements, supporting the building's high efficiency and long-term performance.

### Commissioning

#### Contact

**Guy Stickney**  
Bureau of Land Management  
406.233.2806  
gstickne@blm.gov



# Response to Scope of Work

## Approach

Cushing Terrell uses a proven commissioning process developed by ASHRAE, Building Commissioning Association, and the University of Wisconsin, Madison. The process begins with open communication from the Commissioning Engineer and the Owner regarding the commissioning process, its expected impact on the project and contractors, and anticipated results. Our goal is to assist contractors in staying on schedule, completing equipment start-up and functional testing on time, and minimizing schedule impacts while ensuring quality assurance.

Early in the project, Cushing Terrell will discuss commissioning activities and communication protocols, delivering a comprehensive Commissioning Plan to all stakeholders. After each commissioning site visit, we will develop a Field Report detailing the project status and items reviewed, along with an ongoing list of deficiencies to track issues and resolutions. We will also review and archive project closeout documents, such as Operation and Maintenance Manuals and Warranty Documentation. By utilizing all necessary resources, Cushing Terrell ensures that all systems are thoroughly tested to meet the design intent, seamlessly integrating our commissioning process into the project's lifecycle. Our expertise in commissioning mission-critical data centers ensures that your project operates effectively and efficiently.

## Planning Phase

Cushing Terrell's Commissioning (Cx) Team (composed of Mechanical, Controls, Electrical, Fire Protection, Building Envelope, and Energy expertise) will facilitate the development of the Owner's Project Requirements (OPR).

After accepting the OPR, the project design team will develop a Basis of Design (BoD) document that meets the goals of the OPR. The BoD includes all information necessary to accomplish the goals listed in the OPR, including weather data, interior environmental criteria, other pertinent design assumptions, cost goals, and references to applicable codes, standards, regulations, and guidelines. This document outlines the fundamental components and key considerations for each system, accompanied by a brief explanation of the rationale behind their selection. The BoD identifies the assumptions that underlie the design concepts and capacities. The Cushing Terrell Cx Team will review the BoD and provide comments to ensure the owner has systems that meet the owner's needs as outlined in the OPR. During this phase, the Cx Team will begin to develop the preliminary project Commissioning Plan.

## Design Development Phase

Cushing Terrell's Commissioning Engineers will review the design documents and refer to the BoD to ensure the design intent is satisfied. At this phase, the Commissioning Engineers will update the commissioning plan with equipment lists,

submittal, and O&M requirements, issues log, and progress reporting formats. The first design review will occur during this phase, and comments will be generated and documented in the design log.

## Construction Documents Phase

During this phase, the Cushing Terrell Cx Team will carefully review the construction documents for clarity, verify the energy use baseline, and confirm that we meet the intent of the OPR and BoD. All comments and recommendations will be shared with the owner and design team and documented in the design issues log for tracking purposes. During this phase, Cushing Terrell's CCP will develop specifications detailing the intended commissioning process for the project. We will update the Cx plan during this phase to define the tasks that will occur during construction.

## Construction Administration Phase

Cushing Terrell Commissioning Engineers will attend the pre-construction meeting to open communication channels between the commissioning team. He will provide input to the general contractor on the construction schedule, including commissioning activities, and schedule the initial commissioning scoping meeting. At the scoping meeting, the Cx plan will be reviewed with the contractors on site, ensuring everyone is aware of their responsibilities, the commissioning process, and the scheduling of commissioning activities.



During construction, the Cushing Terrell Cx Team will review the approved project submittals, develop installation checklists completed beforehand, and coordinate with the equipment startup of commissioned systems.

These checklists include the equipment details specified in the design and per manufacturer requirements—kept in a web-based Commissioning platform. The subcontractors complete these checklists when they complete installations. In addition, the CXA will develop functional tests for the commissioned equipment designed to test each system component's operation and then the system as a whole. We develop trends of each system to help monitor the overall building performance.

### Verification Phase

Cushing Terrell's CXA will visit the construction site to review the installation checklists and observe how the contractor installs the equipment during construction. The CXA will attend the startup of significant equipment and sample the startup of minor systems. The startup documentation for each piece of equipment is gathered and will be part of the systems manual. Once the startup is complete and the building is fully enclosed, the test and balance (TAB) contractor will begin to balance the air and water flows. The CXA will coordinate with the TAB contractor to verify a representative sampling of the report results. Upon the discovery of any discrepancies, the TAB contractor will be required to retest those system results. After the TAB is complete, the CXA will lead the functional testing activities.

The Building Automation System will be one of the primary tools for performing tests and system data trending. Cushing Terrell's Cx Team will document each

site visit in a progress report and log all issues to keep track of the data, including correction dates and final acceptance. We will maintain open communication with the owner during this period and address all concerns promptly. Cushing Terrell's Cx Team will review the O&M manuals and coordinate the contractors' schedule to ensure we train the owner's staff on the installed systems and the maintenance requirements. The plan would be for the contractors to use the O&M manuals during training to show where they can find the maintenance items and how to service the equipment.

The CXA will put together the final commissioning report and systems manual for review, which includes the following:

- Description of the commissioning process, including design and construction phase
- Description of the systems commissioned
- OPR and BoD
- Cx Plan
- Summary of all issues resolved and unresolved
- Functional testing process, procedures, and results
- All recommendations for future building operations and improvement

Cushing Terrell will submit the commissioning report to the owner for review comments and incorporate it into the final report completed during the warranty phase.

## Occupancy and Post-Occupancy Operational Warranty Phase.

During the warranty phase, Cushing Terrell will work with the contractors to complete all outstanding deficiency issues. We will require seasonal testing on the systems that we could not complete during the acceptance phase. The functional testing and any additional issues will be reported and documented on the issues log. Ten months into the warranty phase, Cushing Terrell will schedule a meeting to discuss current operations and address any comfort issues. We will perform additional functional testing to verify the correct process. The intent will be to use the Building Automation System to set up trends to help monitor equipment control. Cushing Terrell will update the final commissioning report with the warranty activities and any comments generated during the review process. We approach any issues discovered during commissioning, supplying as much information as possible and offering our recommendations on how to resolve the problem. Before reporting the issue, we will verify that all the system components were working correctly during the test that flagged the issue. An example of the commissioning diagnostic process is the following problem, which was discovered: a large central custom air handler was not providing the design heat transfer for the cooling coil. The following are some of the things we would evaluate:

- Is the installed coil the same as called for in the design drawings and the submittal data? We can check the number

of rows, fins per inch, fin design, circuiting, piping size for flow requirements, and coil dimensions.

- Is the coil piped correctly? Most coils are designed for counterflow but can be incorrectly piped in reverse or parallel flow. Part of the piping check involves verifying that the control valve is properly sized, isolation valves are open, and the balancing valve is set correctly.
- Has the coil been fouled outside or inside the coil? The outside of the coil can become tainted by running the unit during construction and creating a coil service that is dirty or clogged with dirt and debris or having a dirty filter before the coil. The inside of the coil can become fouled due to improper flushing of the unit, objects left in piping, and a clogged filter.
- Are the flows through the coil correct? Improper air and water flow through the coil will affect the heat transfer rate. Additionally, if incorrect flow rates are used in the calculations, then the coils' calculated capacity will be incorrect.
- Are the approach temperatures to the coil acceptable? If the supply water temperature is too warm compared to the supply air temperature or the supply air temperature is too cold than the supply water temperature, the coil cannot obtain adequate heat transfer temperature differentials.

- Is hot water passing through the heating coil during testing? Some units lack a temperature sensor between the heating and cooling coils or do not have sufficient space to take a temperature measurement between the coils. With these systems, a temperature reading should be taken before and after the cooling test is performed to help verify the change in supply air temperature just if the heating valve is leaking. It is also possible that the control sequence for the valve is not operating correctly, and the heating valve is also being activated during the operation of the cooling valve.

Any issues discovered during the commissioning process are documented in the functional tests, project communications, the issues resolution logs, and the final report. Those included in the commissioning team are the Owner, Architect, Design Engineers, General Contractor, and Subconsultants responsible for the commissioned equipment. Issues discovered during commissioning are retested to verify the problem has been corrected.



## Required Forms and Certifications



MISSOULA URBAN TRANSPORTATION DISTRICT

**ADDENDUM ACKNOWLEDGEMENT**

Proposer/Bidder acknowledges receipt of the following addenda which are attached to the proposal/bid:

Addendum No. 1                      Date 6-20-25

Addendum No.                                           Date                     

Addendum No.                                           Date                     

Addendum No.                                           Date                     

Addendum No.                                           Date                     

Failure to acknowledge receipt of all addenda may cause the proposal to be considered non-responsive and omitted from consideration.

MISSOULA URBAN TRANSPORTATION DISTRICT

## Certification and Restrictions on Lobbying

*All Contracts over \$100,000*

I, Alan Bronec, Principal-in-Charge, hereby certify  
(Name and title of official)

on behalf of Cushing Terrell that:  
(Name of Bidder/Company Name)

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

*This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.*

*The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.*

Name of Bidder/Company Name Cushing Terrell

Type or Print Name Alan Bronec

Signature of authorized representative  Date June 27, 2025



## MISSOULA URBAN TRANSPORTATION DISTRICT

**Debarment and Suspension Certification***All Contracts over \$25,000*

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

(1) It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,

(2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:

- a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently: (1) Debarred, (2) Suspended, (3) Proposed for debarment, (4) Declared ineligible, (5) Voluntarily excluded, or (6) Disqualified,
- b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for: (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction, (2) Violation of any Federal or State antitrust statute, or (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
- c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
- d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
- e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
- f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it: (1) Equals or exceeds \$25,000, (2) Is for audit services, or (3) Requires the consent of a Federal official, and
- g. It will require that each covered lower tier contractor and subcontractor: (1) Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and (2) Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be: (a) Debarred from participation in its federally funded Project, (b) Suspended from participation in its federally funded Project, (c) Proposed for debarment from participation in its federally funded Project, (d) Declared ineligible to participate in its federally funded Project, (e) Voluntarily excluded from participation in its federally funded Project, or (f) Disqualified from participation in its federally funded Project, and

(3) It will provide a written explanation as indicated on a page attached in FTA's TEAM-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

**Company** Cushing Terrell

**Signature of Authorized Official:** Alan Bronec

**Date:** 6 / 27 / 25

**Name and Title of Authorized Official** Alan Bronec, Principal-in-Charge

## Pricing





## PROJECT UNDERSTANDING

The Missoula Urban Transportation District (MUTD) is seeking Commissioning Services on the New Operation and Maintenance Facility project.

### Project Address

West Broadway/Whippoorwill Drive  
Missoula, MT

Estimated Size – 68,000 Sq. Ft.

## SCOPE OF WORK

Cushing Terrell will provide the following scope of work to meet the requirements of LEED v4.1 BD+C: NC rating System and achieving Fundamental Commissioning and Verification with Enhanced Systems Commissioning. Below is the Baseline Option 1 Path 1 (Enhanced Commissioning):

A. Design Phase	\$12,154
a. Develop Owner Project Requirements	
b. Develop Basis of Design	
c. 95% Construction Document Review	
d. 100% Construction Document Review	
e. Commissioning Specification Development/Review	
f. Bid Documents Review	
g. Design Phase Commissioning Plan	
h. Project Meetings (8 Included in design phase)	
B. Construction Phase	\$20,260
a. Construction Documents Review	
b. Web-Based Commissioning Notebook	
i. Commissioning Plan	
ii. System Readiness Forms	
iii. System Check-Out Forms	
c. Kick-off Meeting	
d. Submittal Review	

e. Controls Summit Meeting	
f. Lighting Summit Meeting	
g. Functional Test Creation	
h. Construction Observation (4 Site Visits Included in Construction Phase)	
i. Construction Meetings (32 Virtual OAC Meetings)	\$23,999
C. Verification Phase	
a. Commissioning Meetings (4 Virtual Cx Meetings)	
b. Issues Resolution Log	
c. Start-Up / System Check-Out Observation (2 Site Visits Included)	
d. System Readiness/Performance Verification Tests Back Check	
e. TAB Review & Back Check	
f. Functional Testing	
g. Trend Log Analysis	
h. Operation & Maintenance Facilities Staff Training	
D. Warranty/Close-Out Phase	\$13,709
a. Record Drawings Review	
b. Operations & Maintenance Documentation Review	
c. Systems Manual Review	
d. Operations & Maintenance Staff Training Verification	
e. LEED Documentation	
f. Commissioning Report	
g. Seasonal Testing	
h. 10 Month Building Performance Warranty Review	
i. Develop Ongoing Commissioning Plan	
Baseline Lump Sum for Option 1 Path 1 (Enhanced Commissioning):	\$70,122
Baseline Reimbursable Cost:	
A. Baseline Reimbursable Cost Estimates.	\$4,200

**ADD 1** - Below is the additional premium with the added scope of work for Option 1 Path 2 (Enhanced and Monitoring-Based Commissioning):

- A. Monitor-Based Commissioning Phase (Optional) . . . . . \$13,400
- Initial setup of BAS data collection
  - Modeling (WinAm)
  - Trend Analysis / Diagnostics (Implementor)
  - Reporting (Validator)

**Additional Premium for Option 1 Path 2 (Enhanced and Monitoring-Based Commissioning): . . . . . \$13,400**

- ADD 1 Reimbursable Cost:
- A. ADD 1 Reimbursable Cost Estimates . . . . . \$0

**ADD 2** - Below is the additional premium with the added scope of work for Option 2 (Building Enclosure Commissioning). This cost does not include Blower Door Testing, but it can be added for an additional fee.

- A. Design Phase Building Enclosure Commissioning . . . . . \$4,080
- 95% Construction Document Review
  - 100% Construction Document Review
  - Building Enclosure Commissioning Specification Development/Review
- B. Construction Phase Building Enclosure Commissioning . . . . . \$20,040
- Foundation Site Visits (2 Site Visits)
  - Foundation Field Reports
  - Wall Systems Site Visits (2 Site Visits)
  - Wall Systems Field Reports
  - Windows/Doors Site Visits/Testing (2 Site Visits)
  - Windows/Doors Field Reports
  - Roofing Inspection Site Visits/Testing (4 Site Visits)
  - Roofing Field Reports
  - Construction Meetings (8 Virtual Meetings)
- C. Warranty/Close-Out Phase Building Enclosure Commissioning . . . . . \$2,720
- LEED Documentation
  - Commissioning Report
  - 10 Month Building Performance Warranty Review

**Additional Premium for Option 2 (Building Enclosure Commissioning): . . . . . \$26, 840**

- ADD 2 Reimbursable Cost:
- B. ADD 2 Reimbursable Cost Estimates . . . . . \$2,770

### INCLUDED SYSTEMS

The following equipment is included in the scope of the project:

- Plumbing Systems - Domestic hot water generation equipment and irrigation system.
- Hydronic Systems - Heating hot water systems, chilled water systems, heat recovery water systems, and condenser water system. Includes all pumps, condensate pumps, heating and cooling coils, cooling tower, dry cooler, and distribution piping and components.
- Airside HVAC Systems - Includes air handling units, VAV terminal units, air conditioning units, heat recovery units, fresh air fans, supply fans, return fans, general exhaust fans, transfer fans, ventilation fans, make-up air units, and air distribution systems and components.
- Ventilation Systems - Includes exhaust fans, kitchen hoods, industrial ventilation systems.
- Terminal Heating and Cooling Equipment - Includes cabinet heaters, unit heaters, and reheat coils.
- Control Systems - Includes the building automation system and all DDC controls
- Electrical Systems - Includes building transformer, all panel boxes and distribution systems, Lighting Controls, Battery Charging Systems, Rooftop Solar Array with Grid Interconnection, and Emergency Backup Power with ATS.
- Life Safety Systems - Testing of all life safety systems interfaces with the mechanical systems, including duct smoke detectors, AHU shutdown, and fire and fire/smoke dampers.
- Envelope Systems - Foundation, Wall Systems, Windows/Doors, and Roofing.

### FEE PROPOSAL

Cushing Terrell will perform the above scope of work for \$70,122 not including the ADD 1 option for Monitored-Based Commissioning, estimated at \$13,400; or the ADD 2 option for Building Enclosure Commissioning, estimated at \$26,840 and the Reimbursable expenses that are estimated, not to exceed, \$4,200 for the baseline and then an additional \$2,770 for the ADD 2 Building Envelope Commissioning option.

Fee Proposal is valid for 120 days from the date of submittal.



SPECIFIC EXCLUSIONS

- A. Unreasonable repetition of tasks noted above: Cushing Terrell will provide a maximum of two (2) tests for each system. Additional funds may be requested if tested systems do not meet the design criteria either through fault of the contractor, supplier or designer. Undue delays caused by delivery deficiencies of others will be noted as schedule and budget impacts by occurrence and forwarded for redress.
- B. Management of subcontractors: All project contact will be through the established project communications chain to provide formal communication, scheduling, documentation tracking and follow-up tasks.
- C. Troubleshooting of system performance or coordination of Contractor or Owner team members in excess of Acceptance Phase budget allotments.

Thank you for this opportunity to submit this proposal and I look forward to working with you soon. Please contact us with any questions or comments regarding this proposal.

2025 CUSHING TERRELL RATES

COMMISSIONING

Principal Commissioning Agent	Billing
PM Commissioning Agent	\$ 244.92 /hr
Senior Commissioning Agent	\$ 222.66 /hr
Commissioning Agent	\$ 200.39 /hr
Commissioning Technician	\$ 155.86 /hr
	\$ 133.59 /hr

SUPPORT

Project Manager Assistant	\$ 71.25 /hr
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Thank you.

**Cushing  
Terrell**

306 Railroad St W #104 | Missoula, MT 59802 | 406.728.9522

[cushingterrell.com](http://cushingterrell.com)

# PROFESSIONAL SERVICES AGREEMENT

## Project: MOAB Commissioning Services

**THIS AGREEMENT** is made and entered into this 24th day of July, 2025, by and between the **MISSOULA URBAN TRANSPORTATION DISTRICT** whose address is 1221 Shakespeare Street, Missoula, Montana 59802 (hereinafter referred to as “MUTD”), and Cushing Terrell, whose address is 306 Railroad St. W #104, Missoula, Montana 59802, hereinafter referred to as “Contractor.”

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1) **Purpose:** MUTD agrees to hire Contractor as an independent contractor to perform services described in the Scope of Services/Fee Proposal attached hereto as Exhibit A and by this reference made a part hereof.

2) **Effective Date:** This Agreement is effective upon the date of its execution and shall expire on June, 30 2029.

This contract may be extended for a period of one (1) year upon agreement by both parties.

3) **Scope of Work/Task Deadlines:** Contractor will perform the work and provide the services in accordance with the requirements of the Scope of Services/Fee Proposal (Exhibit A).

4) **Payment:** MUTD agrees to pay Contractor a lump sum fee of price not to exceed \$70,122.00 (Seventy thousand one hundred and twenty two 00/100 dollars) for services performed pursuant to the Scope of Services Option 1 Path 1. In addition to the Base Scope, MUTD may elect to authorize the following optional services:

Option 1 – Path 2: Enhanced and Monitoring-Based Commissioning  
If selected, MUTD shall pay a lump sum of \$13,400.00

Option 2 – Building Enclosure Commissioning  
If selected, MUTD shall pay a lump sum of \$26,840.00

Reimbursable expenses associated with each scope are as follows:

For Option 1 Path 1, reimbursable costs shall not exceed \$4,200.00.

For Option 2 – Building Enclosure Commissioning, reimbursable costs shall not exceed

\$2,770.00.

In the event Contractor anticipates the cost of the described work exceeding the agreed upon amount, Contractor shall provide MUTD with a written estimate detailing the nature and scope of the additional work, the estimated number of hours required, and the applicable hourly rate(s) for the work. No additional work shall be performed, and no extra charges shall be incurred, unless and until MUTD has reviewed and agreed to the estimate in writing.

Any alteration or deviation from the described work that involves extra costs will be performed by Contractor after written request by MUTD, and will become an extra charge over and above the contract amount. The parties must agree in writing upon any extra charges.

**5) Obligations of MUTD**

- (a) Compensation: The total fee for the services as described shall not exceed the agreed upon amount. Any additional work must be pre-approved in writing by MUTD.
- (b) Payment shall be made by MUTD within thirty (30) days of receipt of a correct invoice from the Contractor. MUTD will accept invoices for work completed or expenses incurred during mobilization for construction, not to exceed 50% of total contract cost prior to final acceptance. Incorrect invoices are subject to rejection or correction by MUTD.
- (c) Subcontractor Billing: The Contractor shall audit and review all invoicing and billing of subcontractor and assure MUTD that all proper personnel and rates are applied in strict conformance with the Contract.

**6) Independent Contractor Status:** The parties agree that Contractor is an independent contractor for purposes of this Agreement and the parties agree that Contractor is and shall be an independent contractor when performing services pursuant to this agreement. Contractor is not subject to the terms and provisions of MUTD's personnel policies handbook and may not be considered an MUTD employee for workers' compensation or any other purpose. Contractor is not authorized to represent MUTD or otherwise bind MUTD in any dealings between Contractor and any third parties.

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation coverage for all members and employees of Contractor's business, except for those members who are exempted by law. Contractor shall furnish MUTD with copies showing one of the following: **(1)** a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or **(2)** proof of exemption from workers' compensation granted by law for independent contractors.

**7) Subcontractors:** Subcontractors, if any, who will perform work under this Contract shall be the firms designated in this Contract, if any. No other subcontractors shall perform the services required under this Contract without the express written permission of



MUTD. The Contractor is expected to audit and review all invoicing and billing by subcontractors and will ensure that all personnel and billing rates are applied in strict conformance of the Contract.

**8) Ethics:**

- (a) The Contractor warrants that it has not employed nor retained any company, firm or person, other than a bona fide employee working solely for it, to solicit or secure this Contract, and that it has not paid or agreed to pay any company, firm or person, other than a bona fide employee working solely for it, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, MUTD shall have the right to annul this Contract without liability.
- (b) No member 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.
- (c) No member, officer, or employee of MUTD or of a local public body during his tenure shall have any interest, direct or indirect, in this Contract or its proceeds.
- (d) Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, disability, age, marital status, political affiliation, national origin, and/or any protected classifications under state or federal laws.

**9) Indemnity and Insurance:** For other than professional services rendered, to the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold MUTD harmless against claims, demands, suits, damages, losses, and expenses connected therewith that may be asserted or claimed against, recovered from or suffered by MUTD by reason of any injury or loss, including but not limited to, personal injury, including bodily injury or death, property damage, occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Contractor or Contractor's agents or employees.

For the professional services rendered, to the fullest extent permitted by law, Contractor agrees to indemnify and hold MUTD harmless against claims, demands, suits, damages, losses, and expenses, including reasonable defense attorney fees, to the extent caused by the negligence or willful misconduct of the Contractor or Contractor's agents or employees.

For this purpose, Contractor shall provide MUTD with proof of Contractor's liability insurance issued by a reliable company or companies for personal injury and property damage in amounts not less than as follows:

- a) Commercial General Liability - \$1,000,000 per occurrence; \$2,000,000 annual aggregate
- b) Professional Liability - \$1,000,000 per claim; \$2,000,000 annual aggregate

**10) Professional Service:** Contractor agrees that all services and work

performed hereunder will be accomplished in a professional manner.

11) **Compliance with Laws:** Contractor agrees to comply with all federal, state and local laws, ordinances, rules and regulations. Contractor agrees to purchase a City business license.

12) **Default and Termination:** If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party, at its option, may terminate this Agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

13) **Termination For Convenience:** Notwithstanding any other provision of this Agreement to the contrary, either party may terminate this Agreement by giving the other party at least ninety (90) days' prior written notice of its election to terminate. Such termination will be effective on the date stated in the notice.

14) **Modification and Assignability:** This document contains the entire agreement between the parties and no statements, promises or inducements made by either party or agents of either party, which are not contained in this written Agreement, may be considered valid or binding. This Agreement may not be enlarged, modified or altered except by written agreement signed by both parties hereto. The Contractor may not subcontract or assign Contractor's rights, including the right to compensation or duties arising hereunder, without the prior written consent of MUTD. Any subcontractor or assignee will be bound by all of the terms and conditions of this Agreement.

15) **Wage and Hours Law Compliance:**

- (a) Contractor shall comply with all applicable provisions of the Davis Bacon and Related Acts, the Fair Labor Standards Act, the Montana Prevailing Wage Law and all other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save MUTD free, clear and harmless from all actions, claims and expenses arising out of said Act and rules and regulations that are or may be promulgated in connection herewith.
- (b) Contractor shall submit a weekly statement with respect to the wages paid each employee during the preceding week, accompanied by a signed statement indicating the payrolls are correct and complete and that each laborer or mechanic has not been paid less than the proper prevailing wage rate, which for the purposes of this Contract is the greater of the rates prescribed by the Davis Bacon act and the Montana Prevailing Wage Law. Department of Labor form WH-347 may be used for this purpose.

16) **Ownership and Publication of Materials:** All reports, information, data, and other materials prepared by the Contractor pursuant to this Agreement are the property of MUTD. MUTD has the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any re-use without written verification or adaptation by the Contractor for the specific purpose intended will be at MUTD's sole risk and without liability or legal exposure to the Contractor. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written approval of MUTD.

All information concerning MUTD and said projects, which is not otherwise a matter of public record or required by law to be made public, is confidential, and the Contractor will not, in whole or in part, now or at any time disclose that information without the express written consent of MUTD.

17) **Confidential Materials and Public Disclosure**

- (a) This Contract and all records provided to MUTD by Contractor hereunder may be public records subject to disclosure under the Montana Open Records Law and/or other laws requiring disclosure or discovery of records. In the event MUTD receives a request for such disclosure, MUTD will provide Contractor with five (5) days' written notice prior to release of responsive records. The parties acknowledge that MUTD is not liable for any release of records pursuant to public disclosure or discovery laws.
- (b) Contractor shall mark certain record(s) as "Confidential" or "Proprietary" as appropriate given the potential sensitive subject of Contractor's work under this Contract. If Contractor fails to so mark record(s), then upon request, may release said record(s) without the need to satisfy the requirements of subsection A above.

18) **Severability:** Any provision of this Agreement that is found to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be deemed to be modified to the extent necessary to render such provision valid and enforceable; if such provision may not be so saved, it shall be severed and the remainder of the Agreement shall remain in full force and effect. Modification or severance of a provision in any jurisdiction shall not serve to modify, invalidate or render unenforceable such provision in any other jurisdiction

19) **Disclaimers:** Contractor is not responsible for proofreading copy or other materials supplied by MUTD.

20) **Intellectual Property:** MUTD represents and warrants that it owns and/or has the right to use any Intellectual Property furnished or made accessible to Contractor by MUTD. Further, Contractor represents and warrants that it owns and/or has the rights to any domains or web pages to which Contractor transmits Work Product or otherwise has Work Product posted or to which it gives Contractor access to.

As used herein, "Intellectual Property" includes any material subject to patent, trademark,



copyright or trade secret protection, including any text, graphic, photo, design or other work of authorship and any right arising or derived from the same including any entitlement to secure or enforce patent, trademark, copyright or trade secret protection.

21) **Lawful Purpose:** MUTD may only use Contractor's Services and Work Product as permitted by law and may not use the Services or Work Product to infringe on the rights of any other person or entity. If MUTD breaches this section, it shall indemnify Contractor to the fullest extent permitted by applicable law.

22) **Limitation of Liability** Any claim or action by MUTD against Contractor shall, to the fullest extent permitted by applicable law, be limited to the amount of payments made by MUTD to Contractor under this Agreement and, in the event that this Agreement governs multiple projects, then to payments made for performance of Services out of which the claim or action arises.

23) **Promotional Use** MUTD agrees that Contractor may use work performed on behalf of MUTD for Contractor promotional purposes as long as it does not break confidentiality clauses.

24) **Content and Understanding:** This Contract contains the complete and integrated understanding and agreement between the parties and supersedes any previous understanding, agreement or negotiation whether oral or written.

25) **Indemnification:** MUTD agrees to indemnify, defend and hold Contractor harmless against any Claims brought against Contractor to the extent those Claims arise out of MUTD's breach of this Agreement.

MUTD further agrees to indemnify, defend and hold Contractor harmless against any Claims brought against Contractor by any third party alleging (a) a violation of intellectual property rights related to material MUTD provided, made available to, or directed Contractor to use, or (b) MUTD gave, transferred or otherwise allowed to use the Work Product, or (c) a violation of the ADA.

The foregoing indemnification obligations are conditioned upon: (a) complete control of the defense and settlement thereof by MUTD, provided that MUTD shall not settle Claims without the consent of Contractor, such consent not to be unreasonably withheld or delayed; and (b) reasonable cooperation by Contractor in the defense as MUTD may request. Contractor shall have the right to participate in the defense of Claims with counsel of its choice at its own expense.

Likewise, Contractor agrees to indemnify, defend and hold MUTD harmless against any Claims brought against MUTD to the extent those claims arise out of Contractor's breach of this agreement, alleged intellectual property rights violations, unauthorized transmission of Work Product, or ADA violation. The same terms as listed in the paragraph above apply. For purposes of this section, "Claims" means losses, actions, liabilities, damages, expenses, as

well as reasonable attorneys' fees and costs.

26) **Waiver of Officers and Directors Liability:** Neither party shall have recourse or right of action against any shareholder, officer, director or member, in his or her individual capacity as such, past, present or future, of the other party or of any successor thereto, whether by virtue of any statute or rule of law or otherwise, all such liability being, by the acceptance hereof and as part of the consideration of the execution hereof, expressly waived and released.

27) **Authorized Representative:** In performing the services defined herein, Contractor shall report to: *Colin Woodrow, Director of Capital Projects, Planning & Technology at (406) 544-6688*. Contractors' representative is *Matt Scofield, Project Manager & Commissioning Agent, (406) 896-6222*.

28) **Governing Law:** This Agreement and any disputes hereunder shall be governed by the laws of the State of Montana. It is further agreed that all disputes and matters whatsoever arising under, in connection with or incident to this Contract, shall be litigated, if at all, in and before the Fourth Judicial District Court, Missoula County in the state of Montana or federal court located in the District of Montana, and any appropriate appellate court thereof, to the exclusion of the courts of any other state, territory, county, or other jurisdiction.

This Agreement may be modified only by written agreement signed by both parties. Section headings are for convenience of reference only and shall not be considered in construing this Agreement.

This Agreement contains the entire agreement between the parties regarding the subject matter hereto and supersedes all prior and contemporaneous agreements, whether oral or written, between the parties regarding such subject matter.

29) **FTA Required Clauses and Certifications:** MUTD contemplates using Federal Transportation Administrations funds for this project. As such, the applicable FTA Required Clauses and Certifications as contained in Exhibit B are considered part of this contract and should any conflict arise in regard to language of this contract, the FTA Clauses shall prevail.



## **Federal Contract Clauses**

### **No Government Obligations to Third Parties**

*All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)*

1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### **Program fraud and false or fraudulent statements and related acts**

*All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)*

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### **Access to Records and Reports**





*As shown below. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)*

The following access to records requirements apply to this Contract:

- 1) Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
- 2) Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- 3) Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- 4) Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- 5) Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 6) Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.



### **Federal Changes**

*All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)*

Contractor shall 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 purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

### **Civil Rights (Title VI, EEO, ADA)**

*All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)*

The following requirements apply to the underlying contract:

- a) The Recipient agrees that it must comply with applicable federal civil rights laws, regulations, requirements, and guidance, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or a federal program, including the Tribal Transit Program or the Indian Tribe Recipient, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service.
- b) Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that it and each Third Party Participant, will: (1) Prohibit discrimination based on the basis of race, color, religion, national origin, sex, disability, or age. (2) Prohibit the: (a) Exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332, (b) Denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332, or (c) Discrimination, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332. (3) Follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance, and other applicable federal guidance that may be issued, but (b) FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its Underlying Agreement supported with federal assistance under the Tribal Transit Program.
- c) Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant, will: (1) Prohibit discrimination based on race, color, or national origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, and (3) Follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance, (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) All other applicable federal guidance that may be issued.



d) Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit, discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs, (c) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12.a of this Master Agreement, (d) FTA Circular 4704.1, “Equal Employment Opportunity Program Guidelines for Grant Recipients,” July 26, 1988, and (e) Follow other federal guidance pertaining to Equal Employment Opportunity laws, regulations, and requirements, and prohibitions against discrimination on the basis of disability, (2) Specifics. The Recipient agrees to, and assures that each Third Party Participant will: (a) Prohibited Discrimination. As provided by Executive Order No. 11246, as amended by any later Executive Order that amends or supersedes it, and as specified by U.S. Department of Labor regulations, ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their race, color, religion, national origin, disability, age, sexual orientation, gender identity, or status as a parent, (b) Affirmative Action. Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, recruitment, and employment, 2 Rates of pay and other forms of compensation, 3 Selection for training, including apprenticeship, and upgrading, and 4 Transfers, demotions, layoffs, and terminations, but (c) Indian Tribe. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer,” and (3) Equal Employment Opportunity Requirements for Construction Activities. Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with: (a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

e) Disadvantaged Business Enterprise. To the extent authorized by applicable federal laws and regulations, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the Underlying Agreement as follows: (1) Statutory and Regulatory Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of the FAST Act, 23 U.S.C. §101 note, (b) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12.a of this Master Agreement. (2) DBE Program Requirements. A Recipient that receives planning, capital and/or operating assistance and that will award prime third party contracts exceeding \$250,000 in a federal fiscal year must have a DBE program meeting the requirements of 49 C.F.R. part 26, that is approved by FTA, and establish an annual DBE participation goal. (3) Special Requirements for a Transit Vehicle Manufacturer (TVM). The Recipient agrees that: (a) TVM Certification. Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, and (b) Reporting TVM Awards. Within 30 days of any third party contract award for a vehicle purchase, the Recipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract, and notify FTA that this information has been attached to FTA’s electronic





award and management system, the Recipient must also submit subsequent notifications if options are exercised in subsequent years to ensure the TVM is still in good standing. (4) Assurance. As required by 49 C.F.R. § 26.13(a): (a) Recipient Assurance. The Recipient agrees and assures that: 1 It must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 C.F.R. part 26, 2 It must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts, 3 Its DBE program, as required under 49 C.F.R. part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement, and 4 Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement. (b) Subrecipient/Third Party Contractor/Third Party Subcontractor Assurance. The Recipient agrees and assures that it will include the following assurance in each subagreement and third party contract it signs with a Subrecipient or Third Party Contractor and agrees to obtain the agreement of each of its Subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and third party contract it signs: 1 The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26, 2 The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable, 3 Failure by the Subrecipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of this subparagraph 13.d(4)(b) is a material breach of this subagreement, third party contract, or third party subcontract, as applicable, and 4 The following remedies, or such other remedy as the Recipient deems appropriate, include, but are not limited to, withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the Subrecipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible. (5) Remedies. Upon notification to the Recipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 C.F.R. part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.

f) Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332.

g) Nondiscrimination on the Basis of Age. The Recipient agrees to comply with federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act, 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of Programs, Projects, and related activities receiving federal assistance, (4) U.S. Health and Human Services



regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, and (5) Federal transit law, specifically 49 U.S.C. § 5332.

h) Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following federal prohibitions against discrimination on the basis of disability: (1) Federal laws, including: (a) section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally assisted Programs, Projects, or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities: 1 For FTA Recipients generally, Titles I, II, and III of the ADA apply, but 2 For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer,” (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable federal laws, regulations and requirements pertaining to access for seniors or individuals with disabilities. (2) Federal regulations, including: (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37, (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27, (c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38, (d) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39, (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35, (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36, (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and (k) Other applicable federal civil rights and nondiscrimination guidance.

i) Drug or Alcohol Abuse. Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2.

j) Access to Services for Persons with Limited English Proficiency. The Recipient agrees to promote accessibility of public transportation services to persons with limited understanding of English by following: (1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005.



k) Other Nondiscrimination Laws, Regulations, Requirements, and Guidance. The Recipient agrees to comply with other applicable federal nondiscrimination laws, regulations, and requirements, and follow federal guidance prohibiting discrimination. l. Remedies. Remedies for failure to comply with applicable federal Civil Rights laws, regulations, requirements, and guidance may be enforced as provided in those federal laws, regulations, or requirements.

### **Incorporation of FTA Terms**

*All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)*

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in current FTA Circular 4220.1, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

### **Energy Conservation**

*All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)*

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

### **Disadvantaged Business Enterprises (DBEs)**

*Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs*

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs and with section 1101(b) of SAFETEA LU, 23 U.S.C. § 101.

The contractor 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 this FTA-assisted contract. 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 MUTD deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph. The successful proposer/offeree will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

### **Prompt Payment**

*All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)*

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment



for that work from MUTD. In addition, the contractor may not hold retainage from its subcontractors. The contractor must promptly notify MUTD whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of MUTD.

### **Contracts Involving Federal Privacy Act Requirements**

*When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)*

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor 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 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor 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.

(2) The Contractor 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.

### **Patent and Rights in Data**

*Research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual or to micro-purchases (less than \$10,000)*

a) General. The Recipient agrees that: (1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable: (a) Invention, (b) Improvement, or (c) Discovery, (2) The Federal Government's rights arise when the patent or patentable information is: (a) Conceived under the Project, or (b) Reduced to practice under the Project, and (3) When a patent is issued or patented information becomes available as described in Patent Rights section A(2), the Recipient agrees to: (a) Notify FTA immediately, and (b) Provide a detailed report satisfactory to FTA,

b) Federal Rights. The Recipient agrees that: (1) Its rights and responsibilities, and the rights and responsibilities of each Third Party Participant, in that federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance,





including any waiver thereof, and (2) Unless the Federal Government determines otherwise in writing, irrespective of the Recipient's status or the status of any Third Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education, or an individual, the Recipient agrees to transmit the Federal Government's patent rights to FTA as specified in: (a) 35 U.S.C. § 200 et seq., and (b) U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401, and

c) C. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19: (1) License fees and royalties for patents, patent applications, and inventions derived from the Project are program income, and (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing.

#### Rights in Data and Copyrights

a) Definition of "Subject Data" means recorded information: (1) Copyright. Whether or not copyrighted, and (2) Delivery. That is delivered or specified to be delivered under the Underlying Agreement,

b) Examples of "Subject Data." Examples of "subject data": (1) Include, but are not limited to: (a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but (2) Do not include: (a) Financial reports, (b) Cost analyses, or (c) Other similar information used for Project administration,

c) General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient's Project supported by the Underlying Agreement: (1) Prohibitions. The Recipient may not: (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or (b) Permit others to do so, but (2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to: (a) Publications or reproductions for the Recipient's own internal use, (b) An institution of higher learning, (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or (d) The portion of data that has the Federal Government's prior written consent for release,

d) Federal Rights in Data and Copyrights. The Recipient agrees that: (1) License Rights. The Recipient must provide a license to its "subject data" to the Federal Government, which license is: (a) Royalty-free, (b) Nonexclusive, and (c) Irrevocable, (2) Uses. The Federal Government's license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and

e) Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development,



demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third Party Participants, therefore, the Recipient agrees that: (1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet, (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request, (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third Party Participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing, (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA, (5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes "subject data" and must be delivered as the Federal Government may direct, but (6) Exception Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both: (a) For the Recipient's use, and (b) Acquired with FTA capital program funding,

f) License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19: (1) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing,

g) Hold Harmless. Upon request by the Federal Government, the Recipient agrees that: (1) Violation by Recipient. (a) If it willfully or intentionally violates any: 1 Proprietary rights, 2 Copyrights, or 3 Right of privacy, and (b) Its violation occurs from any of the following uses of Project data: 1 Publication, 2 Translation, 3 Reproduction, 4 Delivery, 5 Use, or 6 Disposition, then (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of: 1 The Federal Government's officers acting within the scope of their official duties, 2 The Federal Government's employees acting within the scope of their official duties, and 3 Federal Government's agents acting within the scope of their official duties, but (2) Exceptions. The Recipient will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights section G(1) if: (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or (b) State law. If indemnification is prohibited or limited by applicable State law,

h) Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either: (1) Implies a license to the Federal Government under any patent, or (2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent,

i) Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless: (1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal



funding from unauthorized disclosure unless that data is clearly marked “Proprietary” or “Confidential,” and

j) Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by: (1) The Freedom of Information Act, 5 U.S.C. § 552, (2) Another applicable Federal law requiring access to Project records, (3) U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” specifically 49 C.F.R. § 19.36(d), or (4) Other applicable Federal regulations and guidance pertaining to access to Project records.

### **Bus Testing**

*Rolling stock, except minivans*

NOT APPLICABLE

### **Pre-Award and Post-Delivery Audit Requirements**

*Rolling stock*

NOT APPLICABLE

### **Cargo Preference**

*Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).*

NOT APPLICABLE

### **Fly America**

*All contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).*

Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services

Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their

contractors are required to use US Flag air carriers for US Government-financed international air travel and

transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America



requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

**Seismic Safety**

*Construction of new buildings or additions to existing buildings. These requirements do not apply to micropurchases (\$10,000 or less, except for construction contracts over \$2,000).*

NOT APPLICABLE

**Davis-Bacon and Copeland Anti-Kickback Act**

*Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over \$2,000*

NOT APPLICABLE

**Bonding**

*For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:*

NOT APPLICABLE

**Termination Provisions**

*All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000*

a) Termination for Convenience (General Provision). The recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b) Termination for Default [Breach or Cause] (General Provision). If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.





c) Opportunity to Cure (General Provision). The recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions if contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d) Waiver of Remedies for any Breach. In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e) Termination for Convenience (Professional or Transit Service Contracts). The recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

### **Recycled Products**

*All contracts over \$10,000 for items designated by the EPA*

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

### **Gov't-wide Debarment and Suspension**

*All Contracts over \$25,000*

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the



“System for Award Management” at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel.

### **Buy America**

*Construction Contracts and Acquisition of Goods or Rolling Stock valued at more than \$150,000*

NOT APPLICABLE

### **Breaches and Dispute Resolution**

*All contracts over \$250,000*

a) Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient’s authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient’s CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient’s CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the the False Claims Act, 31 U.S.C. § 3729.

b) Performance During Dispute. Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

c) Remedies. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State. Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### **Lobbying**

*All contracts over \$100,000*



Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non- Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

### **Clean Air**

*All contracts over \$250,000*

1) Contractor shall comply with all applicable standards, orders or regulations pursuant to Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other requirements of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7671q. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

2) Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

### **Clean Water**

*All Contracts and Subcontracts over \$100,000*

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

### **Contract Work Hours and Safety Standards Act**

*Contracts over \$100,000*

NOT APPLICABLE

### **Other Federal Requirements**

***The following requirements are not federal clauses, but apply to all contracts except micro-purchases (\$3,500 or less)***

### **Full and Open Competition**



In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

#### **Prohibition Against Exclusionary or Discriminatory Specifications**

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

#### **Conformance with ITS National Architecture**

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

#### **Access Requirements for Persons with Disabilities**

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

#### **Notification of Federal Participation**

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

#### **Interest of Members or Delegates to Congress**

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

#### **Ineligible Contractors and Subcontractors**

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

#### **Compliance with Federal Regulations**





Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **Real Property**

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by FAST Act, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **Access to Services for Persons with Limited English Proficiency**

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

### **Environmental Justice**

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance.

### **Environmental Protections**

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that



may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

### **Geographic Information and Related Spatial Data**

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

### **Geographic Restrictions**

All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).

### **Organizational Conflicts of Interest**

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

### **Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only**

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant



Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

### **Veterans Preference**

Veterans Preference. As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

### **Safe Operation of Motor Vehicles**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

### **Catalog of Federal Domestic Assistance (CFDA) Identification Number**

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

### **CFDA number for the Federal Transportation Administration**

Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

### **Other Contract Requirements**



To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those provisions attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.



**IN WITNESS WHEREOF**, the parties hereto have executed this instrument the day and year first above written.

**MISSOULA URBAN  
TRANSPORTATION DISTRICT**

By

Signature \_\_\_\_\_

Jordan Hess, General Manager

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

**CUSHING TERRELL**

By

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

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

Exhibit A

## **Scope of Work**

Exhibit A

PROJECT UNDERSTANDING

The Missoula Urban Transportation District (MUTD) is seeking Commissioning Services on the New Operation and Maintenance Facility project.

Project Address

West Broadway/Whippoorwill Drive  
Missoula, MT

Estimated Size -- 68,000 Sq. Ft.

SCOPE OF WORK

Cushing Terrell will provide the following scope of work to meet the requirements of LEED v4.1 BD+C: NC rating System and achieving Fundamental Commissioning and Verification with Enhanced Systems Commissioning. Below is the Baseline Option 1 Path 1 (Enhanced Commissioning):

A. Design Phase	\$12,154
a. Develop Owner Project Requirements	
b. Develop Basis of Design	
c. 95% Construction Document Review	
d. 100% Construction Document Review	
e. Commissioning Specification Development/Review	
f. Bid Documents Review	
g. Design Phase Commissioning Plan	
h. Project Meetings (8 Included in design phase)	
B. Construction Phase	\$20,260
a. Construction Documents Review	
b. Web-Based Commissioning Notebook	
i. Commissioning Plan	
ii. System Readiness Forms	
iii. System Check-Out Forms	
c. Kick-off Meeting	
d. Submittal Review	

e. Controls Summit Meeting	
f. Lighting Summit Meeting	
g. Functional Test Creation	
h. Construction Observation (4 Site Visits Included in Construction Phase)	
i. Construction Meetings (32 Virtual OAC Meetings)	\$23,999
C. Verification Phase	
a. Commissioning Meetings (4 Virtual Cx Meetings)	
b. Issues Resolution Log	
c. Start-Up / System Check-Out Observation (2 Site Visits Included)	
d. System Readiness/Performance Verification Tests Back Check	
e. TAB Review & Back Check	
f. Functional Testing	
g. Trend Log Analysis	
h. Operation & Maintenance Facilities Staff Training	
D. Warranty/Close-Out Phase	\$13,709
a. Record Drawings Review	
b. Operations & Maintenance Documentation Review	
c. Systems Manual Review	
d. Operations & Maintenance Staff Training Verification	
e. LEED Documentation	
f. Commissioning Report	
g. Seasonal Testing	
h. 10 Month Building Performance Warranty Review	
i. Develop Ongoing Commissioning Plan	
Baseline Lump Sum for Option 1 Path 1 (Enhanced Commissioning):	\$70,122
Baseline Reimbursable Cost:	
A. Baseline Reimbursable Cost Estimates.	\$4,200

**ADD 1** - Below is the additional premium with the added scope of work for Option 1 Path 2 (Enhanced and Monitoring-Based Commissioning):

## Exhibit A

- A. Monitor-Based Commissioning Phase (Optional) . . . . . \$13,400
- a. Initial setup of BAS data collection
- b. Modeling (WinAm)
- c. Trend Analysis / Diagnostics (Implementor)
- d. Reporting (Validator)

**Additional Premium for Option 1 Path 2 (Enhanced and Monitoring-Based Commissioning): . . . . . \$13,400**

- ADD 1 Reimbursable Cost:
- A. ADD 1 Reimbursable Cost Estimates . . . . . \$0

**ADD 2** - Below is the additional premium with the added scope of work for Option 2 (Building Enclosure Commissioning). This cost does not include Blower Door Testing, but it can be added for an additional fee.

- A. Design Phase Building Enclosure Commissioning . . . . . \$4,080
- a. 95% Construction Document Review
- b. 100% Construction Document Review
- c. Building Enclosure Commissioning Specification Development/Review
- B. Construction Phase Building Enclosure Commissioning . . . . . \$20,040
- a. Foundation Site Visits (2 Site Visits)
- b. Foundation Field Reports
- c. Wall Systems Site Visits (2 Site Visits)
- d. Wall Systems Field Reports
- e. Windows/Doors Site Visits/Testing (2 Site Visits)
- f. Windows/Doors Field Reports
- g. Roofing Inspection Site Visits/Testing (4 Site Visits)
- h. Roofing Field Reports
- i. Construction Meetings (8 Virtual Meetings)
- C. Warranty/Close-Out Phase Building Enclosure Commissioning . . . . . \$2,720
- a. LEED Documentation
- b. Commissioning Report
- c. 10 Month Building Performance Warranty Review

**Additional Premium for Option 2 (Building Enclosure Commissioning): . . . . . \$26, 840**

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ADD 2 Reimbursable Cost:

- B. ADD 2 Reimbursable Cost Estimates . . . . . \$2,770

### INCLUDED SYSTEMS

The following equipment is included in the scope of the project:

1. Plumbing Systems - Domestic hot water generation equipment and irrigation system.
2. Hydronic Systems - Heating hot water systems, chilled water systems, heat recovery water systems, and condenser water system. Includes all pumps, condensate pumps, heating and cooling coils, cooling tower, dry cooler, and distribution piping and components.
3. Airside HVAC Systems - Includes air handling units, VAV terminal units, air conditioning units, heat recovery units, fresh air fans, supply fans, return fans, general exhaust fans, transfer fans, ventilation fans, make-up air units, and air distribution systems and components.
4. Ventilation Systems - Includes exhaust fans, kitchen hoods, industrial ventilation systems.
5. Terminal Heating and Cooling Equipment - Includes cabinet heaters, unit heaters, and reheat coils.
6. Control Systems - Includes the building automation system and all DDC controls
7. Electrical Systems - Includes building transformer, all panel boxes and distribution systems, Lighting Controls, Battery Charging Systems, Rooftop Solar Array with Grid Interconnection, and Emergency Backup Power with ATS.
8. Life Safety Systems - Testing of all life safety systems interfaces with the mechanical systems, including duct smoke detectors, AHU shutdown, and fire and fire/smoke dampers.
9. Envelope Systems - Foundation, Wall Systems, Windows/Doors, and Roofing.

### FEE PROPOSAL

Cushing Terrell will perform the above scope of work for \$70,122 not including the ADD 1 option for Monitored-Based Commissioning, estimated at \$13,400; or the ADD 2 option for Building Enclosure Commissioning, estimated at \$26,840 and the Reimbursable expenses that are estimated, not to exceed, \$4,200 for the baseline and then an additional \$2,770 for the ADD 2 Building Envelope Commissioning option.

Fee Proposal is valid for 120 days from the date of submittal.

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MUTD COMMISSIONING SERVICES



Exhibit A

SPECIFIC EXCLUSIONS

- A. Unreasonable repetition of tasks noted above: Cushing Terrell will provide a maximum of two (2) tests for each system. Additional funds may be requested if tested systems do not meet the design criteria either through fault of the contractor, supplier or designer. Undue delays caused by delivery deficiencies of others will be noted as schedule and budget impacts by occurrence and forwarded for redress.
- B. Management of subcontractors: All project contact will be through the established project communications chain to provide formal communication, scheduling, documentation tracking and follow-up tasks.
- C. Troubleshooting of system performance or coordination of Contractor or Owner team members in excess of Acceptance Phase budget allotments.

Thank you for this opportunity to submit this proposal and I look forward to working with you soon. Please contact us with any questions or comments regarding this proposal.

2025 CUSHING TERRELL RATES

COMMISSIONING

Principal Commissioning Agent	Billing
PM Commissioning Agent	\$ 244.92 /hr
Senior Commissioning Agent	\$ 222.66 /hr
Commissioning Agent	\$ 200.39 /hr
Commissioning Technician	\$ 155.86 /hr
	\$ 133.59 /hr

SUPPORT

Project Manager Assistant	\$ 71.25 /hr
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