

LF121003-16

**CONTRACT BETWEEN
THE CITY OF RAPID CITY
AND MCKIE FORD TO PROVIDE
VEHICLE MAINTENANCE ON RAPID TRANSIT VEHICLES**

For and in consideration of mutual benefits to accrue therefrom, this agreement entered into on January 1, 2004 by the Common Council of the City of Rapid City (hereinafter referred to as "CITY") and McKie Ford (hereinafter referred to as "CONTRACTOR").

I. PURPOSE

The purpose of this agreement is to establish the intent, amount, duration, terms and conditions for a contract regarding professional services by the CONTRACTOR to provide vehicle maintenance services to the City for the Rapid Transit System.

II. INTENT

The intent of agreement is to provide complete vehicle maintenance on Rapid Transit System vehicles.

III. TERMS OF AGREEMENT

This Contract shall become effective on January 1, 2004, and will terminate on December 31, 2006. It is agreed that this Contract shall be subject to renewal upon consent and approval by both parties to this agreement for two successive one(1) year terms. Such renewal is subject to negotiations regarding expanded, reduced, or continued level of services. CONTRACTOR shall certify to CITY that all employees in a safety sensitive position shall be actively involved in mandatory Federal DOT Drug and Alcohol testing.

IV. COMPENSATION AND EXPENDITURE OF FUNDS

Subject to the terms and conditions set forth in this Contract, the CITY agrees to compensate the CONTRACTOR according to the following schedule: Hourly fleet labor rate of \$45.00 (2004); \$47.50 (2005); \$50.00 (2006); fifteen (15%) discount on all Ford service parts; a LOF labor rate of \$18.62 on all Ford chassis vehicles (cutaways).

V. PAYMENT

The CITY shall pay the CONTRACTOR in accordance with submitted vouchers for services rendered. Payment shall be made to the CONTRACTOR as earned, in accordance with the monthly submitted vouchers, within thirty (30) days of receipt of voucher.

VI. INSPECTION OF WORK

The CITY shall, at all times, be accorded the right for review and inspection of all work performed on vehicles. In addition, the CITY shall also, at all times, reserve this same right to authorized personnel of the Federal Transit Administration (FTA).

VII. TERMINATION

The CITY reserves the right to terminate this agreement for cause or convenience. Such termination shall be by thirty (30) days written notice to the CONTRACTOR at its office in Rapid City.

VII. FEDERAL AND STATE LAWS/REGULATIONS

The CONTRACTOR shall comply with all applicable Federal, State, and local laws and regulations.

VIII. MODIFICATION

No modification of this agreement shall be performed unless made in writing and signed by authorized agents of each party.

Dated this _____ day of _____, 2003.

MCKIE FORD

CITY OF RAPID CITY

McKie Ford

Jim Shaw, Mayor

ATTEST:

Fiance Officer

(SEAL)

VEHICLE NUMBER: _____ VEHICLE MILEAGE _____ SERVICE DATE: _____

MAINTENANCE ITEMS	WORK TO BE PERFORMED	CHECKED (OK)	SERVICED (S)	ADDED (A)	REPLACED (REPL)	REPAIRED (RPR)	NEEDS ATTENTION
LUBE, OIL, FILTER	X						
FLUIDS							
Cooling System	X						
Brake Fluid	X						
Power Steering Fluid	X						
Transmission Fluid	X						
Battery Fluid Level	X						
Battery Cables	X						
Rear Differential	X						
HOSES							
Upper Radiator Hose	X						
Lower Radiator Hose	X						
Power Steering	X						
Other							
BELTS							
Alternator	X						
Power Steering	X						
Smog Pump	X						
Air Conditioner	X						
Other							
BRAKES							
Front Pads	X						
Rotors	X						
Rear Drums							
Rear Shoes							
Brake Lines							
TIRES							
Inflation	X						
Rotation							
FILTERS AND EMISSIONS							
Air Filter	X						
PCV Valve	X						
Breather Element	X						
FRONT END							
All Components	X						
ELECTRICAL							
Headlights	X						
Tail Lights	X						
Brake Lights	X						
Clearance Lights	X						
Back up Lights	X						
Turn Signals	X						
Flashers	X						
ENGINE							
Scope							
Tune Up							
TRANSMISSION							
Service							
WHEEL CHAIR LIFT							
Lubricate	X						

MECHANICS SIGNATURE _____ DATE _____

Gasoline every 2500 mi Diesel every 4000 mi Bluebird every 5000 mi
 All other maintenance as per manufacturers specifications

ATTACHMENT B

1. Drug and Alcohol Testing: The CONTRACTOR agrees to participate in the City of Rapid City's drug and alcohol program established in compliance with 49 CFR 653 and 654.

2. Energy Conservation Requirements: The CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

3. Federal Changes: The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTORS failure to comply shall constitute a material breach of this contract.

4. No Government Obligation to Third Party Contractors: (1) The CITY and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the CITY, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. (2) The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

5. Program Fraud and False or Fraudulent Statements: (1) The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.* And U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 3, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the 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 the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

(2) The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

(3) The CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

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

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

(c) Opportunity to Cure (General Provision): The City of Rapid City in its sole discretion may, in the case of a termination for breach or default, allow the CONTRACTOR [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If CONTRACTOR fails to remedy to the City of Rapid City'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 of written notice from the City of Rapid City setting forth the nature of said breach or default, the City of Rapid City 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 City of Rapid City 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 City of Rapid City elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this Contract, such waiver by the City of Rapid City shall not limit the City of Rapid City's 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 City of Rapid City, by written notice, may terminate this contract, in whole or in part, when it is in the

Government's interest. If this contract is terminated, the City of Rapid City shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(f) Termination for Default(Supplies and Services): If the CONTRACTOR fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the CONTRACTOR fails to comply with any of the provisions of this contract, the City of Rapid City may terminate this contract for default. The City of Rapid City shall terminate by delivering to the CONTRACTOR a Notice of Termination specifying the nature of the default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the CONTRACTOR or was not in default, the rights and obligations of the parties shall be the same as if the termination had not been issued for the convenience of the City of Rapid City.

7. Privacy Act: (a) Applicability to Contracts - When a grantee maintains files on drug and alcohol enforcement activities for FTA, those files are organized so that information could be retrieved by the personal identifier, the Privacy Act requirements apply to all contracts.

(b) Contracts Involving Federal Privacy Act Requirements: 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.

8. State and Local Law Disclaimer: CONTRACTOR understands that all state and local disclaimers must be adhered to.

9. Incorporation of Federal Transit Administration (FTA) Terms: The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220,1D, dated April 15, 1996, 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 the City of Rapid City requests which would cause the City of Rapid City to be in violation of the FTA terms and conditions.

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10. **Civil Rights Requirements:** The City of Rapid City, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

APPENDIX A TO TITLE VI ASSURANCE

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made part of this contract.
- (2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitation for Subcontracts Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) Information and Reports: The contractor shall provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City of Rapid City or the FTA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the City of Rapid City, or the FTA as appropriate and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with nondiscrimination provisions of this contract, the City of Rapid City shall impose

contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

- (a) Withholding of payments to the contractor under the contract until the contractor complies; and/or
 - (b) cancellation, termination, or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs one (1) through six (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the City of Rapid City or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the contractor may request the City of Rapid City to enter into such litigation to protect the interests of the City of Rapid City, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

11. **Disadvantaged Business Enterprise (DBE):** The Federal year goal has been set by the City of Rapid City in an attempt to match the projected procurement with available qualified disadvantaged businesses. The City of Rapid City goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by the City of Rapid City as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, the City of Rapid City may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this Contract.

(a) Policy - It is the policy of the Department of Transportation and the City of Rapid City that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age, or physical handicap in the award and performance of subcontracts.

It is further the policy of the City of Rapid City to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of the City of Rapid City procurement activities are encouraged.

(b) DBE Obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

(c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the City of Rapid City may declare the contractor noncompliant and in breach of contract.

(d) The Contractor will keep records and documents for a reasonable time following performance of

this contract to indicate compliance with the City of Rapid City DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of the City of Rapid City and will be submitted to the City of Rapid City upon request.

(e) The City of Rapid City will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their program for DBE participation. The assistance may include the following upon request:

- * Identification of qualified DBE
- * Available listing of Minority Assistance Agencies
- * Holding bid conferences to emphasize requirements

2. DBE Program Definitions, as used in the contract:

(a) Disadvantaged business "means a small business concern::

i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock which is owned by one or more socially and economically disadvantaged individuals; and

ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

or

iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51 % of the stock of which is owned by one or more women individuals, and

iv. Whose management and daily business operations are controlled by one or more women individuals who own it.

(b) "Small business concern" means a small business defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.

(c) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian - Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;

- ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- iv. "Asian - Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;
- v. "Asian-Indian Americans", which includes person whose origins are from India, Pakistan, and Bangladesh.

12. Access to Records

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major 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, an hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with 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 any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agree to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).