

COMMITTEE OF THE WHOLE

TUESDAY, MAY 21, 2024

6:00 PM

1. Council on Aging Annual Report – Dale Pfau
2. Brief discussion on planning documents.

NOTICE FOR, AND AGENDA FOR, A REGULAR MEETING OF THE CITY COMMISSION, CITY OF LEWISTOWN, MAY 21, 2024 AT 7:00 P.M. AT THE CENTRAL MONTANA COMMUNITY CENTER LOCATED AT 307 W WATSON

To participate virtually the options are as follows:

To join by zoom: <https://zoom.us/j/8486275925?pwd=dTVGbndDK253ZUJLMjRuZXU5QVpMdz09>

Meeting ID: 848 627 5925 Passcode: 59457

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES –May 6, 2024

COURTESIES

PROCLAMATIONS

BOARD AND COMMISSION REPORTS

CITY MANAGER REPORT

PUBLIC COMMENT – non agenda items

CONSENT AGENDA

Acknowledgement of the claims that have been paid from May 1, 2024 to May 15, 2024 for a total of \$247,152.76

***REGULAR AGENDA – Resolutions, Ordinances & Other Action Items:**

1. Discussion and action on the letter of resignation submitted by Ward III Commissioner Scotten effective May 6, 2024 (**Action: approve, disapprove or amend resignation of Ward III Commissioner Scotten**) City Manager Holly Phelps
2. Discussion and action on procedure for appointing a Commissioner for Ward III (**Action: approve, disapprove or amend procedure for appointing a Commissioner for Ward III**) City Manager Holly Phelps
3. Public hearing to hear comments on a conditional use permit application submitted by Tiffany Potter to locate and operate an infant childcare business at 510 W Janeaux St
4. Discussion and action on approving a conditional use permit application submitted by Tiffany Potter to locate and operate an infant childcare business at 510 W Janeaux St (**Action: approve, disapprove or amend conditional use permit application**) City Manager Holly Phelps
5. Discussion on the City's process of property and/or liability claims. City Manager Phelps
6. Discussion and action on authorizing the City Manager to sign a memorandum of understanding between the Montana Department of Transportation and the City of Lewistown for the state funded City Park rest area maintenance program FY 2025 (Kiwanis Park public rest area) (**Action: approve, disapprove or amend authorizing the City Manager to sign the MOU between the MDT & the City**) City Manager Holly Phelps

CITIZENS' REQUESTS

COMMISSIONER'S MINUTE

ADJOURNMENT

* All citizens are invited to make comment on any agenda item prior to action being taken by the Commission

Section 2.02 Composition

The City of Lewistown shall have a city commission of seven (7) members, two of whom shall be elected from each of three (3) wards and one (1) who shall be elected at large.

Section 2.03 Qualifications for Office

Every resident of the City of Lewistown who is 18 years of age or older, a citizen of Montana and a qualified elector pursuant to Article IV, Section 2 of the Montana Constitution is eligible to hold the office of commissioner for the ward in which he or she resides or the office of the Commissioner elected at large.

Section 2.04 Term of Office

Members of the commission shall be elected for four (4) year overlapping terms of office.

Section 2.05 Election

Local government elections shall be conducted on a nonpartisan basis. With the exception of the member elected at large, commission members shall be elected by wards in which candidates must reside and which are apportioned by population. One commission member from each ward shall be elected every two years.

Section 2.06 Vacancy in Office

The office of commissioner becomes vacant as prescribed by law.

Section 2.07 Removal from Office

A commissioner may be removed from office by a finding, adopted by the affirmative vote of four (4) commissioners, that the office has become vacant as prescribed by law, or by the recall of the commissioner by the electors of Lewistown, as prescribed by law.

Section 2.08 Filling Vacancy on the Commission

When a vacancy occurs in the office of commissioner, the position shall be considered open and subject to nomination and election at the next general municipal election, except the term of office shall be limited to the unexpired term of the person who originally created the vacancy. Pending such election and qualification, the commission shall appoint within 30 days of the vacancy, by the affirmative vote of four (4) commission members, a person possessing the qualifications for office required by law and this Charter to hold the office until the successor is elected and qualified.

May 21, 2024

Item # 4. Discussion and action on an application for a Conditional Use Permit (24-01-CU) to locate and operate an infant childcare business at 510 W Janeaux Street.

Proposal:

The City of Lewistown is in receipt of an application to locate and operate an infant childcare business at 510 W Janeaux Street. The property is further described as Lewistown Original Townsite, Section 15, Township 15 N, Range 18 E, Block H-11, lot 003.

The proposed business will be in the Central Business District 2 (C2) Zone. The request is to allow for an infant, ages 6 weeks to 23 months, childcare.

Public hearings will be held before the Zoning Commission on May 16, 2024, and before the City Commission on May 20, 2024. Both hearings are at the Council on Aging – Community Center at 307 W Watson Street.

Background:

The property previously has been used for commercial uses that provide retail and service outlets which serve the city or region. There is a one and one-half to two-story building on the lot that most recently housed a bicycle repair shop.

Facts and Recommendation:

The Planning Department recommends conditionally approving of the Conditional Use Permit (CUP). Childcare is critically needed in Lewistown. The need for childcare was confirmed most recently through surveys and focus groups as part of the update of Lewistown's Growth Policy and Land Use Plan in which the lack of childcare was identified as a significant reason for the inability to recruit and retain employees at schools, the hospital, and businesses.

Currently, the only zones in which childcare is outright allowed are in Neighborhood Commercial and Public Institution. Special review is required for Childcare in all Residential zones, Manufactured Home, and General Commercial (C1) zones.

The proposed Childcare is for a maximum of 6 infants to be cared for between the hours of operation, 6:45 am to 7 pm, Monday through Saturday.

The expected traffic and parking are expected to be more than previous businesses at 510 W Janeaux Street.

Childcare is completely consistent with the purpose and intent of uses in the Central Business Zone District, providing service outlets which serve the city or region. Childcare services are critically needed in Lewistown.

Conditions of approval to Ensure the Conditional Use will not adversely affect the public health, safety, or general welfare:

All State of Montana requirements for infant childcare of up to 6 infants must be met to begin operating the childcare.

The building at 510 W Janeaux Street must be deemed qualified by the Montana Department of Public Health and Human Services for licensure.

The building shall be inspected for fire and other safety reasons by the Lewistown Fire Marshal and Building Inspector. All identified safety needs shall be implemented prior to operating the childcare.

All Lewistown parking requirements in front of the building on both sides of Janeaux Street must be adhered to. No parking is allowed in the private parking lots located on either side of the building (SUS Furniture and Courtesy Motors). A plan for off-street parking is highly recommended.

The alley between the buildings at 510 W Janeaux Street and Snowy Mountain Development Corporation is preferred as the primary drop off and pick up location for infants, utilizing the entrance on this side of the building. No parking is allowed in the alley for more than the time necessary to safely drop off and pick up infants. The alley is a one-way with entrance from Main Street and exit onto Janeaux Street. Circulation shall be from the entrance to the alley from Main Street to exiting the alley onto Janeaux Street. The deteriorated one-way sign at the entrance to the alley (posted on the Abel Bros building) shall be replaced with a new sign.

Zoning Commission Recommendation:

The Zoning Commission unanimously recommends approval of the CUP application with the following conditions:

1. All State of Montana requirements for infant childcare of up to 6 infants must be met to begin operating the childcare.
2. The building at 510 W Janeaux Street must be deemed qualified by the Montana Department of Public Health and Human Services for licensure.
3. The building shall be inspected for fire and other safety reasons by the Lewistown Fire Marshal and Building Inspector. All identified safety needs shall be implemented prior to operating the childcare.

4. All Lewistown parking requirements in front of the building on both sides of Janeaux Street must be adhered to. No parking is allowed in the private parking lots located on either side of the building (SUS Furniture and Courtesy Motors). A plan for off-street parking is highly recommended.

AGREEMENT BETWEEN
THE MONTANA DEPARTMENT OF TRANSPORTATION
AND
THE CITY OF LEWISTOWN
FOR THE
STATE-FUNDED CITY PARK REST AREA MAINTENANCE PROGRAM
SFY 2025

This Agreement is entered into by and between the Montana Department of Transportation (MDT), whose address is 2701 Prospect Avenue, Helena, MT 59620 and the City of Lewistown (CITY), whose address is 305 W. Watson Street, Lewistown, MT 59457. This Agreement establishes the roles and responsibilities relative to maintenance of the city park rest areas.

WHEREAS, MDT recognizes the need to maintain rest area facilities for the traveling public along Montana's Primary and Non-Interstate National Highways; and

WHEREAS, MDT's Montana Rest Area Plan provides state funds, subject to the necessary approvals by the Legislature for the maintenance of the facility; and

WHEREAS, the CITY desires to repair and maintain public rest areas within its city parks; to continue providing an important service to highway users; and

WHEREAS, it is to the advantage of both the MDT and the CITY to coordinate their efforts in accomplishing this agreement without duplication of efforts.

NOW, THEREFORE, in consideration of the following mutual promises,

ARTICLE I – GENERAL OBLIGATIONS OF THE CITY

A. The CITY will:

- 1) Maintain and repair public rest areas within its city parks, including all eligible activities approved by MDT's Multi-Modal and Facilities Bureaus associated with facility maintenance, utilities, cleaning supplies and janitorial services necessary to provide a clean and safe rest area facility.
- 2) Submit claims/bills for all eligible costs for the time period of July 1, 2024 to June 30, 2025 directly related to the maintenance of rest areas and agreed upon between the MDT and the CITY by **June 30, 2025**. All costs billed will be for the actual amount and supported by an acceptable accounting system. Efforts may be performed by other entities through local agreements; however, MDT will only reimburse the CITY.
- 3) Agree eligible costs include janitorial supplies, labor, garbage disposal, grounds maintenance, and utilities necessary to provide a safe and clean rest area. Other items will be considered on a case-by-case basis with MDT's prior approval. Reimbursements are limited to costs directly benefiting the traveling public.

ARTICLE II – GENERAL OBLIGATIONS OF MDT

A. MDT will :

- 1.) Reimburse the CITY costs not to exceed \$6,980.00 for eligible activities approved by MDT's Multi-Modal Planning and Facilities Bureaus associated with facility maintenance, utilities, cleaning supplies, and janitorial services necessary to provide a safe and clean rest area facility. If there are additional funds remaining in the overall program budget for the period of performance of the contract, this Agreement may be reevaluated for eligible costs above the agreed upon budget.
- 2.) Make payment within 30 days of the submittal of a properly executed invoice/request for reimbursement.
- 3.) Periodically inspect each facility to ensure the facility has been maintained to a satisfactory manner.

ARTICLE III – GENERAL TERMS AND CONDITIONS

A. Both parties agree as follows:

- 1.) Term - The term of this Agreement shall be for State Fiscal Year 2025 (July 1, 2024 through June 30, 2025).
- 2.) Termination -The parties may mutually terminate this Agreement in writing at any time. MDT, at its sole discretion, may terminate or reduce the scope of this Agreement if available funding is reduced for any reason. MDT may terminate this Agreement in whole or in part at any time CITY fails to perform the Agreement terms as set forth.
- 3.) Hold Harmless & Indemnification – The CITY agrees to protect, defend, indemnify, and hold MDT, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the CITY's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of the CITY, its agents, or sub-contractors, under this Agreement, except the sole negligence of MDT.

The State and Department of Transportation agrees to protect, defend, indemnify, and hold the CITY, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the MDT's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of MDT, its agents, or sub-contractors, under this Agreement, except the sole negligence of the CITY.

4.) Insurance

General Requirements: Each party shall maintain for the duration of this Agreement, at its own cost and expense, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the duties and obligations in this Agreement by each party, its agents,

employees, representatives, assigns, or sub-contractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

General Liability Insurance: Each party shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1 million per occurrence and \$2 million aggregate per year to cover such claims as may be caused by or arising out of any negligent acts or omissions in work or services performed under this Agreement, or as established by statutory tort limits as provided by a public entity self-insurance program either individually or on a pool basis as provided by Mont. Code Ann. Title 2, Chapter 9.

General Provisions: All insurance coverage must be with a carrier licensed to do business in the State of Montana or by a public entity self-insured program either individually or on a pool basis. Each party must notify the other immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. Each party reserves the right to request complete copies of the other party's insurance policy or self-insured memorandum of coverage at any time.

Workers' Compensation Insurance: The CITY must maintain workers' compensation insurance and require its contractors and its contractor's sub-contractors to carry their own workers compensation coverage while performing work within MDT right-of-way in accordance with Mont. Code Ann. §§39-71-401 and 39-71-405. Neither the contractor nor its employees are employees of MDT. This insurance/exemption must be valid for the entire Agreement period.

- 5.) Amendment - This Agreement may be modified only by a written amendment, signed, and dated by both parties.
- 6.) Governing Law & Venue - This Agreement shall be governed by the laws of the State of Montana. Venue for any litigation will only be in the First Judicial District Court, Lewis and Clark County, State of Montana.
- 7.) Binding Effect- The obligations set forth in this Agreement shall be binding upon, and the benefit of this Agreement shall inure to the benefit of, the party's respective successors and assigns.
- 8.) Relationship of the Parties - Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or create any partnership, joint venture or other association between MDT and the CITY.
- 9.) Non-Discrimination- During the performance of any work arising out of this Agreement the CITY, for itself, assignees and successors shall comply with all applicable non-discrimination regulations shown on MDT's Non-Discrimination and Disability Accommodation Notice, Attachment A, which is hereby incorporated by reference.

Additionally, MDT requires that any construction or maintenance resulting from this Agreement must include appropriate facilities that meet or exceed current MDT standards for accessibility as set forth by the United States Department of Justice 2010 ADA Standards for Accessible Design, United States Access Board Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way, and MDT Detailed Drawings, 608 Series.

- 10.) Audit – The CITY agrees the Legislative Auditor and the Legislative Fiscal Analysts may audit all records, reports, and other documents, which the CITY maintains under or in the course of this

Agreement to ensure compliance with this Agreement. Such records, reports and other documents may be audited at any reasonable time.

- 11.) Access and Retention of Records – The CITY agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine compliance with this Agreement. The CITY agrees to create and retain records supporting this Agreement for a period of three years after the completion date of this Agreement or the conclusion of any claim, litigation or exception relating to this Agreement taken by the State of Montana or a third party.
- 12.) Compliance with Laws – The CITY, in the performance of this Agreement, fully comply with all applicable state or local laws, rules and regulations, including but not limited to the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973.
- 13.) Severability and Integration – If any single part or parts of this Agreement are determined to be void, the remaining parts will remain valid and operative. This Agreement, as written, expresses the total, final and only Agreement of the parties relevant to its subject matter. No provision, expressed or implied, arising from any prior oral or written request, bid, inquiry, negotiation, contract, or any other form of communication shall be a provision of this Agreement unless specifically provided within the written terms herein.
- 14.) Counterpart Execution - This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

APPROVED FOR THE CITY OF LEWISTOWN

By: _____ Date: _____

APPROVED FOR THE STATE OF MONTANA DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

Reviewed for:

Legal Content

DocuSigned by:

By: Valerie Balukas Attorney MDT
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Civil Rights

DocuSigned by:

By: Megan Handl
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ATTACHMENT A

MDT NONDISCRIMINATION AND DISABILITY ACCOMMODATION NOTICE

Montana Department of Transportation ("MDT") is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter "protected classes") by its employees or anyone with whom MDT does business:

Federal protected classes

Race, color, national origin,
sex, sexual orientation, gender
identity, age, disability, income-level
& Limited English Proficiency

State protected classes

Race, color, national origin, parental/marital
status, pregnancy, childbirth, or medical
conditions related to pregnancy or childbirth,
religion/creed, social origin or condition, genetic
information, sex, sexual orientation, gender
identification or expression, ancestry, age,
disability mental or physical, political or religious
affiliations or ideas, military service or veteran
status, vaccination status or possession of
immunity passport

For the duration of this contract/agreement, the PARTY agrees as follows:

(1) Compliance with Regulations: The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Non-discrimination:

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. The PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. A statement that the PARTY does not discriminate on the grounds of any protected classes.
 - ii. A statement that the PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
 - iii. Contact information for the PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.

iv. Information on how to request information in alternative accessible formats.

- c. In accordance with Mont. Code Ann. § 49-3-207, the PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that the PARTY does not discriminate on the grounds of any protected class.

(3) Participation by Disadvantaged Business Enterprises (DBEs):

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml
- b. By signing this agreement, the PARTY assures MDT that:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

- c. The PARTY must include the above assurance in each contract/agreement the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(6) Sanctions for Noncompliance: In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

(7) Pertinent Non-Discrimination Authorities: During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Federal

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

State

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

(8) Incorporation of Provisions: The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.