

# Contract for Professional Architectural and Engineering Services

## W.O. 10-13, SRTS Study, Phase 2

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In consideration of the mutual promises herein, City of Billings and Sanderson-Stewart agree as follows. This Contract consists of:

- Part I, consisting of 15 Sections of Special Provisions;
- Part II, consisting of 11 Sections of General Provisions;
- Appendix A consisting of 4 pages (Basic Services of Contractor);
- Appendix B consisting of 1 page (Methods and Times of Payment);
- Appendix C consisting of 1 page (Additional Services of Contractor);
- Appendix D consisting of 3 pages (Schedule of Professional Fees);
- Appendix E consisting of 1 page (Project Schedule);
- Appendix F consisting of 2 pages (MDT Required Provisions)
- Appendix G consisting of 8 pages (SRTS Non-Infrastructure Contract #104597)
- Appendix H consisting of Certificate(s) of Insurance

### **PART I SPECIAL PROVISIONS**

#### Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" means Sanderson-Stewart.

#### Section 2. Scope of Services.

- A. The Contractor shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.

- B. Billings shall pay the Contractor in accordance with the Schedule of Professional Fees attached as Appendix D and incorporated herein by reference for services actually performed under this Contract.
- C. Billings shall not allow any claim for services other than those described in this Section. However, the Contractor may provide, at its own expense, any other services that are consistent with this Contract.
- ~~D. The Contractor shall provide as-built drawings on mylars and in digital format, as approved by the City of Billings, to the Administrator within 30 days after the project completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings. NOT APPLICABLE~~
- ~~E. The Contractor shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable. NOT APPLICABLE~~

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on July 30, 2011.

Section 4. Compensation; Method of Payment.

- A. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why. Billings will pay Contractor within 30 days of receiving an acceptable invoice.
- B. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- C. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

Section 5. Termination of the Contractor's Services.

The Contractor's services under Section 2 of this Part may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of Billings, provided that Billings notifies the Contractor in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this Subsection is subject to the condition that the terminating party notifies the other party of its intent to

terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within 30 days after receiving the notice.

#### Section 6. Duties Upon Termination

- A. If Billings terminates the Contractor's services for convenience, Billings shall pay the Contractor for its actual costs reasonably incurred in performing before termination and Billings shall pay for services rendered prior to termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Billings.
- B. If the Contractor's services are terminated for cause, Billings shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by Billings because of the Contractor's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed ninety percent (90%) of the total compensation allowable under Section 4 of this Part. Any finished or unfinished documents or materials prepared by the Contractor under this Contract shall become the property of Billings at its option.
- C. If the Contractor receives payments exceeding the amount to which it is entitled under Subsections A or B of this Section, he shall remit the excess to the Administrator within 30 days of receiving notice to do so.
- D. The Contractor shall not be entitled to any compensation under this Section until the Contractor has delivered to the Administrator all documents, records, Work product, materials and equipment owned by Billings and requested by the Administrator.
- E. If the Contractor's services are terminated for whatever reason the Contractor shall not claim any compensation under this Contract, other than that allowed under this Section.
- F. If a final audit has not been performed before the Contractor's services are terminated, Billings may recover any payments for costs disallowed as a result of the final audit.
- G. Except as provided in this Section, termination of the Contractor's services under Section 5 of this Part does not affect any other right or obligation of a party under this Contract.

#### Section 7. Insurance.

- A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Contractor shall provide the following insurance:
  - 1. Workers' compensation and employer's liability coverage as required by Montana law.
  - 2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.

3. Commercial automobile liability -- \$500,000 per accident.
  4. Professional liability in the amount of \$1,500,000 per claim.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
  - D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

Unless otherwise allowed by this Contract or in writing by the Administrator, any assignment by the Contractor of its interest in any part of this Contract or any delegation of duties under this Contract shall be void, and an attempt by the Contractor to assign any part of its interest or delegate duties under this Contract shall give Billings the right immediately to terminate this Contract without any liability for Work performed.

Section 9. Ownership; Publication, Reproduction and Use of Material.

- A. Except as otherwise provided herein, all data, documents and materials produced by the Contractor under this Contract shall be the property of Billings, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents, or other materials. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright. Contractor shall retain rights to pre-existing proprietary property including but not limited to interactive models. The Contractor shall have the right to include photographic or artistic representations of the design and construction of the Project among the Contractor's promotional and professional materials. The Contractor's materials shall not include Billings' confidential or proprietary information regardless of whether Billings has previously advised the Contractor in writing of the specific information considered by Billings to be confidential and proprietary.
- B. Equipment purchased by the Contractor with Contract funds: See Appendix A, Section 3. Scope of Work.
- C. Should Billings elect to reuse Work products provided under this Contract for other than the original project and/or purpose, Billings will indemnify and hold harmless the Contractor from any and all claims, demands and causes of action of any kind or character arising as a result of reusing the documents developed under this contract. Additionally, any reuse of design drawings or specifications provided under this Contract must be limited to conceptual or preliminary use for adaptation, and the original Contractor's or subcontractor's signature, professional seals and dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for adaptation.

Section 10. Notices.

Any notice required pertaining to the subject matter of this Contract shall be either sent via facsimile (FAX), e-mail, or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Billings: Debi Meling, P.E., City Engineer  
City of Billings  
Public Works  
2224 Montana Ave  
Billings, Montana 59101

e-mail: melingd@ci.billings.mt.us  
FAX: (406) 237-6291

Contractor: Michael Sanderson, P.E., PTOE  
Sanderson Stewart  
1300 North Transtech Way  
Billings, MT 59102

e-mail: msanderson@sandersonstewart.com  
FAX: (406) 656-0697

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or 5 days after proof of proper posting.

Section 11. Contract Budget.

In connection with its performance under this Contract, the Contractor shall not make expenditures other than as provided in line items in the Contract budget.

Section 12. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:
  - 1. Any interruption, suspension or interference resulting solely from the act of Billings or neglect of Billings not otherwise governed by the terms of this Contract.
  - 2. Strikes or Work stoppages.
  - 3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
  - 4. Order of court, administrative agencies or governmental officers other than Billings.

Section 13. Financial Management System.

The Contractor shall establish and maintain a financial management system that:

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;
- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance

- under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
- C. Effectively controls and accounts for all municipal funds and Contract property;
  - D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
  - E. Allocates administrative costs to direct service delivery units;
  - F. Minimizes the time between receipt of funds from Billings and their disbursement by the Contractor;
  - G. Provides accounting records supported by source documentation; and
  - H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

#### Section 14. Funding Requirements.

In the event that any funding source for this Contract should impose additional requirements upon Billings for the use of those funds, the Contractor agrees to abide by those additional requirements immediately upon receipt of written notice thereof from Billings.

#### Section 15. Subcontracts.

The Contractor may enter into subcontracts for the purchase of goods and services necessary for the performance of this Contract, provided:

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefor.
- B. Every subcontract under which the Contractor delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Contractor.
- C. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract.

**PART II**  
**GENERAL CONTRACT PROVISIONS**

Section 1. Relationship of Parties.

The Contractor shall perform its obligations hereunder as an independent Contractor of Billings. Billings may administer the Contract and monitor the Contractor's compliance with its obligations hereunder. Billings shall not supervise or direct the Contractor other than as provided in this Section.

Section 2. Nondiscrimination.

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The Contractor shall state, in all solicitations or advertisements for employees to Work on Contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
- C. The Contractor shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.
- D. The Contractor shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this Contract, so as to be binding upon every such subcontractor or vendor of the Contractor under this Contract.
- E. The Contractor shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

Section 3. Permits, Laws, and Taxes.

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Contract. All actions taken by the Contractor under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this Contract.

Section 4. Nonwaiver.

The failure of either party at any time to enforce a provision of this Contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Contract or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

Section 5. Amendment.

- A. This Contract shall only be amended, modified or changed by a writing, executed by authorized representatives of the parties, with the same formality as this Contract was executed.
- B. For the purposes of any amendment modification or change to the terms and conditions of this Contract, the only authorized representatives of the parties are:

Contractor: Michael Sanderson, P.E., PTOE, Principal  
(title of position)

Billings: City Council or Authorized Designee

- C. Any attempt to amend, modify, or change this Contract by either an unauthorized representative or unauthorized means shall be void.

Section 6. Jurisdiction; Choice of Law.

Any civil action rising from this Contract shall be brought in the District Court for the Thirteenth Judicial District of the State of Montana, Billings. The law of the State of Montana shall govern the rights and obligations of the parties under this Contract.

Section 7. Severability.

Any provision of this Contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Contract.

Section 8. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 9. Liability.

The Contractor shall indemnify, defend, save, and hold Billings harmless from any and all claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any agent, employee or subcontractor as a result of the Contractor's or any subcontractor's performance pursuant to this Contract.

- A. The Contractor shall not indemnify, defend, save and hold Billings harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Billings occurring during the course of or as a result of the performance of the Contract.
- B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Contractor, the Contractor shall indemnify, defend, save, and hold Billings harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, which result from the Contractor's or any subcontractor's wrongful or negligent acts occurring as a result from the Contractor's performance pursuant to this Contract.

Section 10. Inspection and Retention of Records.

The Contractor shall, at any time during normal business hours and as often as Billings may deem necessary, make available to Billings, for examination, all of its records with respect to all matters covered by this Contract for a period ending three years after the date the Contractor is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Contractor shall submit such other information and reports relating to its activities under this Contract, to Billings, in such form and at such times as Billings may reasonably require. The Contractor shall permit Billings to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data relating to all matters covered by this Contract. Billings may, at its option, permit the Contractor to submit its records to Billings in lieu of the retention requirements of this Section.

Section 11. Availability of Funds.

Payments under this Contract may require funds from future appropriations. If sufficient funds are not appropriated for payments required under this Contract, this Contract shall terminate without penalty to Billings; and Billings shall not be obligated to make payments under this Contract beyond those which have previously been appropriated.



## Appendix A

### Basic Services of Engineer

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#### Section 1. Engineer's Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Engineer's portion of the project as defined in the scope of work and to prepare and deliver to Billings all plans, specifications, bid documents, and other material as designated herein.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Engineer shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.
- D. Engineer's work shall be in accordance with the standards of sound engineering and present City, State, and National standards and policies currently in use.
- E. Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.
- F. The Engineer shall certify with the submission of final plans that the plans are in conformance with applicable sections of Title 69, Chapter 4, Part 5, of the Montana Code Annotated as pertaining to existing utilities.
- G. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.
- H. Where Federal funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.
- I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the Engineer. Reports will be submitted in a timely manner to permit prompt resolution of problems.
- ~~J. Contract administration duties will include review of contractor certified payrolls for wage rate compliance. Discrepancies in certified payrolls will be resolved with the~~

~~Contractor. A signed Engineer's Payroll Check Sheet (included in the Standard Modifications to MPWSS) will be submitted as proof of this review with one copy of each payroll. NOT APPLICABLE~~

- K. Name a Task Director who shall be the liaison between Billings and the Engineer. For this project the Task Director designated for the Engineer is Danielle Scharff, P.E., PTOE working under the Principal-in-Charge, Michael Sanderson, P.E., PTOE.

## Section 2. Billings Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is H. Terry Smith, P.E., PTOE, City Traffic Engineer.

## Section 3. Scope of Work.

### **Task 1: Inventory and Review**

1.1 Incorporate field information verified by Police Department volunteers (including existing signing, sidewalks, and crosswalks) into GIS information provided by City of Billings within a 1 mile radius of each of the elementary schools included in the study. The eleven elementary schools included in the study are: Alkali Creek, Big Sky, Broadwater, Burlington, Central Heights, Highland, McKinley, Miles Avenue, Orchard, Rose Park, and Sandstone.

1.2 Review *School Zone Traffic Control Policy*, *School Route Priority Study*, *Survey about Walking and Biking to School*, and crossing guard policies for information relevant to current study.

### **Task 2: Identify Major Barriers and Conflict Areas**

2.1 Within 1 mile of each school, identify barriers that prohibit safe pedestrian access to school, including roadways with high speeds or traffic volumes, waterways, lack of sidewalks, etc.

2.2 For up to 1 hour per school, observe unsafe driver behaviors near the schools and off-site conflict areas that are unsafe for students walking and bicycling to school. Observation times will be determined in consultation with City and School representatives.

2.3 For up to 1 hour per school, observe school access conditions, site circulation, and parent and bus loading zones.

### **Task 3: Develop Maps**

3.1 Based on City GIS maps, develop base maps for 11 elementary schools that show existing sidewalks, trails, marked crosswalks, and crossing guard locations. Show barriers, recommended improvements, attendance boundaries, and 1-mile radius around each school. These maps will be developed in conjunction with Task 1.

3.2 Use base maps above to develop Recommended Walking Route Maps for each school.

3.3 School site circulation maps showing teacher parking, visitor parking, bus loading, and parent loading zones.

#### **Task 4: Recommended Improvements**

4.1 Identify short, medium, and long-term improvements at each school that will be based on the MUTCD and generally accepted traffic engineering principles. Recommended improvements will focus on the safety of students walking and biking to school, speed zones, parking lot circulation, and parent and bus loading zones.

4.2 Identify immediate low-cost solutions that can be implemented using existing resources.

4.3 Develop no more than three exhibits per school, as required, that illustrate recommended improvements for display at school meetings and inclusion in the final report.

#### **Task 5: Implementation Strategies**

5.1 Determine the three highest priority projects for each school based on stakeholder input and the significance of various safety concerns.

5.2 Perform budget level cost estimates, including a general cost range for the top three priority projects for each school.

5.3 Provide a list of potential funding sources.

5.4 Provide a recommended list of factors for consideration in establishing a city-wide priority list for the intermediate and long term projects identified at each school in both the Phase 1 and Phase 2 studies. The City shall be responsible for establishing any final city-wide prioritization of projects.

#### **Task 6: Global Issues**

6.1 Identify the big-picture issues that may be affecting students' ability to walk or bike to school.

6.2 Make general recommendations related to the location of school attendance boundaries, busing distances, and school start times.

6.3 Provide any additional comments required to address items needed for future SRTS funding applications. It is anticipated that these issues will be addressed within approximately three pages of the final report.

#### **Task 7: Stakeholder Involvement**

7.1 Review and summarize results from *Survey about Walking and Biking to School* for the 11 schools included in this study.

7.2 Hold up to three steering committee meetings at various points throughout the project.

7.3 Hold up front meetings with each school principal to explain the project and solicit school input on problem areas.

7.4 After these results have been compiled, review meetings will be held for two different groups of schools by area of town. Each school will designate two to three representatives (Principal, PTA member, etc.) to attend the meeting and provide input on behalf of the school.

## **Task 8: Final Report**

8.1 Compile resulting information into a comprehensive report that provides the documentation needed to satisfy Safe Routes funding requirements.

8.2 Internal quality control review of draft report.

8.3 Present draft report to steering committee for review.

8.4 Prepare final report based on the comments received from the steering committee.

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## Appendix B

### Methods and Times of Payment

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#### Section 1. Payments for Basic Services.

Billings shall authorize payment to the Engineer for services performed under Appendix A of this Agreement. Partial payment shall be due the Engineer upon receipt of the Engineer's pay estimate, said estimate being proportioned to the work completed by the Engineer.

Partial payment shall be made to the Engineer upon receipt of the Engineer's pay estimate, said estimate being proportioned to the work completed by the Engineer. The total of all partial payments shall not exceed ninety per cent (90%) of the total contract amount prior to completion and acceptance of the final report (Task 8). The final payment shall be made only after acceptance of final documents by Billings, and determination that the scope of work has been satisfactorily completed.

- A. For services rendered, Appendix A, the Engineer shall be paid based upon actual time accrued, but not to exceed \$55,350.00
- B. Final payment shall be the above stated basic fee less all previous payments.

#### Section 2. Payments for Extra Services when Authorized by Billings.

Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study shall be paid for on an hourly basis at the applicable fees in Appendix D.

#### Section 3. Corrections.

Costs of Billings work that is required for corrections to the Engineer's work which requires redoing by Billings shall be deducted from any payments due the Engineer, if the Engineer fails to make the required corrections.

#### Section 4. Fee Increases

For contracts and services that are expected to require more than one (1) year to complete, the above stated basic services payments may be reviewed and adjusted annually by mutual agreement of the parties, based upon documented evidence that the Engineer's costs and hourly rates as shown in Appendix D have increased for all comparable clients.

## Appendix C

### Additional Services of Engineer

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Extra Services of the Engineer will be paid only with written prior authorization by Billings.

- A. Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study.

## Appendix D

### Schedule of Professional Fees

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Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustments. Hourly rates for services effective on the date of this Agreement are attached hereto.

The itemized schedule provided attached includes direct labor costs, normal payroll and overhead costs, transportation, furnishing equipment and materials normally required for performance of the work and reasonable profit. Direct project costs not itemized herein shall be paid for at actual cost.

Materials and other direct costs will be invoiced at current rates, plus a ten percent (10%) handling fee. Included as direct costs are the following:

- A. Approved Employee Meals, Lodging, Transportation
- B. Premium Delivery Service (UPS, Federal Express, etc.)
- C. Toll Communication Services (Telephone, Fax, etc.)
- D. Supplies
- E. Premiums for Special Insurance, Performance Bonds, etc.
- F. Other Out-of-Pocket Expenses
- G. Consultants

The cost of Professional Liability Insurance coverage is included in the hourly rates of personnel.

## CHARGE OUT RATES EFFECTIVE JANUARY 1, 2010

### SURVEY CREW SERVICES

1-man Crew	\$ 145.00 /hour
2-man Crew	\$ 175.00 /hour

- NOTE: 1) Charge out rate for travel time to and from the site same as above.  
2) Minimum of one-hour charge for field crew time.

### STAFF PERSONNEL SERVICES

Expert Witness/Special Consultant	\$ 250.00 /hour
Principal	\$ 150.00 /hour
Senior Engineer	\$ 115.00 /hour
Project Engineer	\$ 90.00 /hour
Staff Engineer	\$ 77.00 /hour
Engineer Intern	\$ 66.00 /hour
Land Planner/Landscape Architect	\$ 105.00 /hour
Landscape Designer	\$ 77.00 /hour
Senior Professional Land Surveyor	\$ 105.00 /hour
Professional Land Surveyor	\$ 95.00 /hour
Staff Surveyor	\$ 79.00 /hour
Designer	\$ 75.00 /hour
CADD Technician	\$ 65.00 /hour
Senior Construction Engineering Technician	\$ 88.00 /hour
Construction Engineering Technician	\$ 65.00 /hour
Construction Inspector	\$ 60.00 /hour
Project Administrator	\$ 65.00 /hour
Party Chief	\$ 75.00 /hour
Administrative/Clerical	\$ 50.00 /hour

Outside Consultants:

- 1) At cost if independently billed direct to client.
- 2) Cost plus 5% if billed through us.

Independent Laboratories:

- 1) At cost if independently billed direct to client.
- 2) Cost plus 5% if billed through us.

**ADMINISTRATIVE EXPENSES**

Administrative expenses (including copies, prints, phone, postage, materials, and travel) based on professional services only 3.5% \*

\* *unless modified by contract*

## Appendix E

### Project Schedule

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Based on a notice to proceed by Billings date no later than December 15, 2010, the completion date for the Engineer's work through final report shall be July 29, 2011. All work subject to reimbursement under the City-State Safe Routes to School Non-Infrastructure Contract included herein as Appendix G shall be completed and invoiced no later than June 30, 2011.

Delays affecting the completion of the work within the time specified of more than ninety (90) days, not attributable to or caused by the Parties hereto, may be considered as cause for the renegotiation or termination of this Contract.

If the Engineer is behind on this Contract due to no fault of Billings, then the Engineer hereby acknowledges the right of Billings to withhold future Contracts to the Engineer in addition to any other remedy until this Contract is brought back on schedule or otherwise resolved.

## Appendix F

### Montana Department of Transportation Required Provisions

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#### NON-DISCRIMINATION NOTICE

During the performance of this Agreement, **Sanderson Stewart**, (hereafter in this Section "the Party"), for itself, its assignees and successors in interest, agrees as follows:

**A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS**

- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
  - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
  - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.

- (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

**B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, SEC. 49-3-207, MCA**

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

**C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

- (1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **"The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party."**
- (3) All video recordings produced and created under contract and/or agreement will be closed-captioned.

**D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26**

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

**The Party, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Party 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**

## Appendix G

### City-State SRTS Contract

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Pursuant to the Section 3.3 of the *Safe Routes to School Non-Infrastructure Contract Number 105132* between the City of Billings and the Montana Department of Transportation, attached hereto is a copy of said Contract 105132.

**Safe Routes to School Non-Infrastructure Contract**  
**CFDA #20.205 – Safe Routes to School**

This Contract is entered into between the State of Montana, Department of Transportation, Transportation Planning Division, 2701 Prospect Avenue, P.O. Box 201001, Helena, Montana (State) and, City of Billings, Planning and Community Services Department, City Hall, 210 North 27th Street, Billings, MT 59101 (Grantee), Ron Tussing, Mayor (Program Sponsor). Liaison for the State is Audrey Allums, Transit Supervisor. Liaison for the Grantee is Debi Meling.

The State, having received grant monies from the Federal Highway Administration (FHWA), through Section 1404, SAFE ROUTES TO SCHOOL PROGRAM,, and desiring to assist the Grantee, enters into the following contract with Grantee. Actual award is contingent upon the availability of FHWA funding.

**ARTICLE 1. PROJECT**

**SECTION 1.1 Purpose of Contract.** This contract provides assistance for the Grantee to execute a Safe Routes to School Non-Infrastructure program in accordance with the Safe Routes to School funding application submitted to and approved by Montana Department of Transportation – Transit Section.

**SECTION 1.2 Scope of Project.** Grantee shall undertake, implement, and complete the project as described in its Billings Elementary School Traffic Plan 2011 application (Attachment 1) in accordance with the regulations of Section 1404 Safe Routes to School program. The Grantee shall use its best efforts to efficiently and economically complete the Project. Approved activities for reimbursement include, but are not limited to:

Continuation of SRTS planning for all Billings Elementary Schools.

**SECTION 1.3 Period of Performance.** This contract will be effective from July 1, 2010 to June 30, 2011.

**SECTION 1.4 Cost of Project.** The total amount of reimbursements made by the State cannot exceed \$ 50,000.00 for completion of the approved Safe Routes to School Non-Infrastructure Project. State will make quarterly reimbursement payments to Grantee based upon the State's approval of reports and invoices submitted by the Grantee. The cost of the Project shall be shared as follows:

100 Percent FHWA Reimbursement Funding for Non-Infrastructure: \$ 50,000.00

**SECTION 1.5 Purchase of Project Equipment.** The State, on behalf of the Grantee, or the Grantee with the State's prior approval, shall purchase all Project equipment in accordance with applicable State law and the standards set forth by the Uniform Administration

Requirement for Grant and Cooperative Agreement to State and Local Government. Project equipment shall be purchased in conformity with the latest approved Cost of Project as shown in Section 1.4.

**SECTION 1.6 Title to Project Equipment.** The Grantee shall not hold title to Project equipment purchased. The State shall be the first secured party. The State shall be the first secured party. The State may enforce this provision through legal action to protect its security interests in the Project equipment.

**SECTION 1.7 Use of Project Equipment.** The Grantee shall use Project equipment for Safe Routes to School program service described in the Project Application and in accordance with FHWA regulations. If any Project equipment is no longer needed for this service, the Grantee shall immediately notify the State and the State shall release any secured interest of such Project equipment.

**SECTION 1.8 Maintenance.** During the contract period Grantee shall maintain the Project equipment and facilities at a high level of cleanliness, safety and mechanical soundness. In addition, all accessible features and equipment used by persons with disabilities must be maintained in operating condition. Equipment must be repaired promptly, and reasonable steps must be taken to continue serving persons with disabilities while the repairs are being made (reference 49 CFR, Subpart G, 37.161 and 37.163). The State reserves the right to rehabilitate any Project equipment covered under this contract, after proper application by Grantee and approval by the State.

**SECTION 1.9 Insurance.** During the Contract term, the Grantee shall maintain insurance or self-insurance (property damage and liability) adequate to protect the federal funded portion of Project facilities and equipment. Grantee will furnish proof of such insurance for the State's approval.

**SECTION 1.10. Records, Reports and Information Access.**

**1.10.1 Recordkeeping.** The Grantee shall keep records regarding the use of Project property, compliance with the provisions of this Contract, the federal assurances, and such records as the State and the Federal Highway Administration (FHWA) may require, including financial statements, program operation data, contracts and other Project-related documents. If a third party has exclusive possession of any required information and refuses or fails to provide that information, the Grantee shall inform the State and set forth its efforts to obtain this information. Grantee shall maintain these records for at least three years after any final payment and all other matters pending under this Contract are closed.

**1.10.2 Reporting.** Grantee shall advise the State in writing of Project progress at such times and in such manner as the State and FHWA may require, but not less than quarterly.

**1.10.3 Media.** Acknowledge funding for this project is provided through the Montana Department of Transportation in all publicity and earned media.

**1.10.4 Information Access.** The Grantee shall permit the State, FHWA, or their authorized representatives, to inspect all equipment purchased for the Project, all records, data, accounts, and materials pertaining to the Project.

## ARTICLE 2. DEFAULT AND TERMINATION

SECTION 2.1 Default. Nonperformance by the Grantee of any obligation imposed by this Contract, including noncompliance with the federal assurances in Articles 3 and 4, or reduction of local project cost funding, will constitute default.

SECTION 2.2 Termination. This Contract may be terminated by the State by serving a notice of termination on the Grantee. Termination may occur for either convenience or default. If termination is for convenience, the notice shall give the Grantee thirty days to wind down its activities under this Contract. If termination occurs due to default, the notice shall state the nature of the Grantee's default, and offer the Grantee ten (10) days for an opportunity to explain its nonperformance. If the State finds that the Grantee has a reasonable excuse for nonperformance, which is beyond the control of the Grantee, the State may set up a new work schedule and allow the completion of this Contract.

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

SECTION 2.3. Litigation. Controversy arising from this contract may result in litigation. Arbitration is not available. This Contract shall be governed by Montana law.

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

## ARTICLE 3. MISCELLANEOUS

SECTION 3.1 Contract Modification. Any change to this contract will only be by written agreement of the Parties.

SECTION 3.2 Assignment and Subcontracting. The Grantee shall not assign any portion of the work to be performed under this contract, or execute any contract, amendment or change order thereto, or obligate Grantee in any manner with any third party with respect to Grantee's rights and responsibilities under this contract, without the prior written concurrence of the State.

SECTION 3.3 Subcontracts. The Grantee shall include in all subcontracts entered into pursuant to this Agreement a copy of this Contract, and the subcontract will make the provisions of this Contract a specific part of the subcontract. In addition, the Grantee shall include the following provisions in any advertisement or invitation to bid for any procurement under this contract:

### Statement of Financial Assistance

This agreement is subject to a financial assistance contract between the Montana Department of Transportation, the U. S. Department of Transportation, and the Federal Highway Administration.

SECTION 3.4 Indemnification. The Grantee shall indemnify, defend, and hold harmless the State of Montana, its Department of Transportation, its employees and agents from and against all claims, demands, or actions from damages to property or injury to persons or other damage to persons or entities arising or resulting from the performance of this Contract.

SECTION 3.5 Settlement of Third Party Contract Disputes or Breaches. The term "third-party contract," as used in this Contract, is defined as a contract between the Grantee and its subcontractor in which the Grantee has procured a good and/or service commercially from the

subcontractor. FHWA has a vested interest in the settlement of disputes, defaults, or breaches involving any federally assisted third party contracts. FHWA retains the right to a proportionate share, based on the percentage of the Federal share committed to the Project, of any proceeds derived from any third party recovery. Therefore, the Grantee shall avail itself of all legal rights available under any third party contract. The Grantee shall notify the State of any current or prospective litigation or major disputed claim pertaining to any third party contract. FHWA reserves the right to concur in any compromise or settlement of the Grantee's claim(s) involving any third party contract, before making Federal assistance available to support that settlement. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the Project account involved unless FHWA permits otherwise.

SECTION 3.6 Notice. All notices arising from the provisions of this Contract shall be in writing and given to the parties at the addresses listed above, either by regular mail or delivery in person.

SECTION 3.7 Agency Assistance. No assistance, other than provided for by this Contract, will be required, but may be provided at the discretion of State.

SECTION 3.8 Severability and Integration. If any part, or parts, of this contract are determined to be void, the remaining parts will remain valid and operative. This document, together with its schedules, attachments, and exhibits, represent the complete and entire understanding of the parties on its subject matter. No provision, express or implied, arising from any prior oral or written request, bid, inquiry, negotiation, contract, or any other form of communication, shall be a provision of this contract unless it is reduced to writing, signed by the parties, and attached to this document.

SECTION 3.9 Prohibited Interest. No employee, officer, board member or agent of the Grantee shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

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

SECTION 3.10 Interest of Members of or Delegates to Congress. No member of 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 therefrom.

SECTION 3.11 Waivers. A party's failure to enforce any provision of this Contract shall not be construed as a waiver excusing the other party's future performance.

SECTION 3.12 Ineligible Bidders. Bidders or Suppliers whose names appear on the U. S. Comptroller General's List of Ineligible Contractors are not eligible for award of, or participation in, any contract that may be awarded as a result of this contract. Submission of a bid by any bidder constitutes certification that he or any subcontractor or suppliers to him, on this proposed contract, if one is awarded, are not on the Comptroller General's List of Ineligible Contractors. A subsequent determination by FHWA that a bidder knowingly made any misstatement of facts in this regard will be cause for immediate disqualification, suspension or termination of the contract for cause.

SECTION 3.13 Prohibition Against Use of Federal Funds for Lobbying. The Grantee or its subcontractor shall not use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation or appropriations pending before Congress or a state legislature.

SECTION 3.14 Employee Political Activity. The provisions of 5 U.S.C. 1501-1508, 7324-7326 (the "Hatch Act"), and implementing regulations set forth in 5 C.F.R. Part 151 are applicable to State and local agencies and their officers and employees to the extent covered by the statute and regulations. The "Hatch Act" restricts the political activity of an individual principally employed by a State or local executive agency in connection with a program financed in whole or in part by Federal loans, grants, or cooperative agreement.

SECTION 3.15 False or Fraudulent Statements or Claims. The Grantee acknowledges that, should it make a false, fictitious, or fraudulent claim, statement, submission, or certification to the State or Federal Government in connection with this project, MDT reserves the right to pursue the procedures and impose on the Grantee the penalties of 18 U.S.C. 1001, 31 U.S.C. 3801, et seq., and/or 49 U.S.C. 5307(n)(1), as may be deemed by MDT to be appropriate.

SECTION 3.16 Debarment and Suspension. The Grantee shall obtain from its third party contractors certifications required by Department of Transportation regulations, "Government-wide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29, and otherwise comply with the requirements of those regulations.

SECTION 3.17 No State Obligations to Third Parties. The State shall not be subject to any obligations or liabilities to any third party in connection with the performance of this Project without the specific written consent of the State and FHWA. Neither the concurrence in nor the approval of the award of this contract or any subcontract, or the solicitation thereof, nor any other act performed by the State under this contract shall constitute such consent.

SECTION 3.18 Federal Changes. Grantee shall at all times comply with all applicable FHWA regulations, policies, procedures and directives.

SECTION 3.19 Authority. The Grantee warrants that it has the lawful authority to enter this contract (Signature Authority), and that it has taken all actions and complied with all procedures necessary to execute the authority lawfully in entering this contract, and that the undersigned signatory for Grantee has been lawfully delegated the authority to sign this contract on behalf of Grantee.

SECTION 3.20 Compliance with Laws. Some of the clauses contained in this contract are not governed solely by Federal law, but are significantly affected by State law. The laws and regulations cited in this contract are not all-inclusive of those which may apply to the successful completion of this contract. The Grantee understands that it is its responsibility to learn what federal, state and local laws and regulations will apply to its operation under this contract, and that Grantee is solely responsible for its lawful compliance with them.

SECTION 3.21 Audit Requirement. The Grantee shall perform an audit in compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 et seq. and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The Grantee will provide the MDT Transit Section with a copy of the audit report for each fiscal year FHWA funds are received by the Grantee if funding thresholds are met.

SECTION 3.22 Elderly and Handicapped. The Grantee agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et

*seq.*, and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age. The Grantee also agrees to comply with the requirements of 49 U.S.C. 5301(d), 29 U.S.C. 794, the Americans with Disabilities Act, as amended (42 U.S.C. 12101 *et seq.*), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*), as well as the applicable requirements of the regulations implementing those laws.

**SECTION 3.23 Air Pollution.** No facilities or equipment shall be acquired, constructed, or improved as a part of the Project unless the grantee obtains satisfactory assurances that they are (or will be) designed and equipped to limit air-pollution as provided in accordance with EPA regulations, applicable federally-approved State Implementation Plan(s), appropriate FTA directives and all other applicable standards.

**SECTION 3.24 Energy Conservation.** The Grantee and its third party contractors shall recognize 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 (42 U.S.C. 6321, *et seq.*).

**SECTION 3.25 Federal Changes.** Grantee shall at all times comply with all applicable FHWA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the State and FHWA, as they may be amended or promulgated during the term of this contract. Grantee's failure to so comply shall constitute a material breach of this contract.

**SECTION 3.26 Incorporation of FHWA 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, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FHWA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Grantee shall not perform any act, fail to perform any act, or refuse to comply with any State requests which would cause the State to be in violation of the FHWA terms and conditions.

**SECTION 3.27 Privacy Act.** The Grantee agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Grantee agrees to obtain the express consent of the Federal Government before the Grantee or its employees operate a system of records on behalf of the Federal Government. The Grantee understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

#### **ARTICLE 4. NON-DISCRIMINATION NOTICE**

During the performance of this contract, City of Billings, Planning and Community Services Department (hereafter in this Section "the Party"), for itself, its assignees and successors in interest, agrees as follows:

**A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS**

- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of

equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.

- (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
  - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
  - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation

to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

**B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, SEC. 49-3-207, MCA**

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

**C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

- (1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **"The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party."**
- (3) All video recordings produced and created under contract and/or agreement will be closed-captioned.

**D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26**

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: **The Party, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Party 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.**

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed.

CITY OF BILLINGS, ~~PLANNING AND COMMUNITY SERVICES DEPARTMENT~~

BY: Christina Fleck, City Administrator

DATE: 6/17/10

MONTANA DEPARTMENT OF TRANSPORTATION

BY: Lynn Zanjo, Administrator

DATE: 7/1/10

Approved for Legal Content by: James J. [Signature]

Approved for Civil Rights Content by: Bill Anderson

## Appendix H

### Certificate(s) of Insurance

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Attached hereto are all Certificates of Insurance from Sanderson Stewart required under the terms of the contract.

DRAFT