



## CONSULTANT AGREEMENT

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as “**CITY**,” and **FEHR & PEERS**, 1001 4<sup>th</sup> Ave, Suite 4120, Seattle, Washington 98154, hereinafter referred to as “**CONSULTANT**.”

### **WITNESSETH:**

**WHEREAS**, the **CITY** proposes to obtain information regarding the development of a Hospitality Corridor and desires to hire **CONSULTANT** as an independent contractor to perform the services as described in the Scope of Work attached hereto as Exhibit “A” and by this reference made a part hereof.

**WHEREAS**, the **CITY** has authority to contract for such services, and;

**WHEREAS**, the **CONSULTANT** represents that he/she is fully qualified to perform such services personally and is in compliance with the Montana Statutes relating to the provisions of such services.

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

1. **PURPOSE**: **CITY** agrees to hire **CONSULTANT** as an independent contractor to perform the services as described in the Scope of Work attached hereto as Exhibit “A” and by this reference made a part hereof. In performing these services, the **CONSULTANT** shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

2. **TERM**: This **AGREEMENT** shall be for a period of one year, from the execution of this **AGREEMENT**. This **AGREEMENT** may be extended for 1-six month option by mutual agreement of both parties, in writing, thirty (30) days prior to termination.



3. **PAYMENT:** In consideration of the services provided by the **CONSULTANT** under this **AGREEMENT**, the **CITY** agrees to pay **CONSULTANT** a price not to exceed \$69,910.00 as described in the Project Cost attached hereto as Exhibit "B".

In the event scope of work issues arise, the **CONSULTANT** shall immediately discuss them with the Project Manager for the **CITY**. It is understood that the Consultant will not perform any work that the **CITY** deems outside the scope prior to receiving written approval from the **CITY**, and at a rate agreed upon by both parties. Any payment for work not agreed upon by the **CITY** shall be denied.

**CONSULTANT**, shall invoice City monthly for the percentage of the work completed by the **CONSULTANT**. **CITY** shall pay undisputed invoices within thirty (30) days of the invoice date and may deduct five percent (5%) from each pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final invoice by the **CITY**, and determination has been made by the **CITY** that the scope of work has been satisfactorily completed.

4. **INDEPENDENT CONTRACTOR STATUS:** The parties agree that **CONSULTANT** is an independent Contractor for purposes of this **AGREEMENT** and is not to be considered an employee of the **CITY** for any purpose. **CONSULTANT** is not subject to the terms and provisions of the **CITY**'s personnel policies handbook and may not be considered a **CITY** employee for workers' compensation or any other purpose. **CONSULTANT** is not authorized to represent the **CITY** or otherwise bind the **CITY** in any dealings between **CONSULTANT** and any third parties.

5. **INDEMNITY AND INSURANCE:**

- A. The Consultant 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 **AGREEMENT**.
- B. The Consultant agrees to indemnify, defend and save City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Consultant or its agents or employees.
- C. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Consultant, the Consultant 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



Consultant's or any subcontractor's wrongful or negligent acts occurring as a result from the Consultant's performance pursuant to this **AGREEMENT**.

- D. The **CONSULTANT** shall maintain in good standing the insurance described in this Section. Before rendering any services under this **AGREEMENT**, the **CONSULTANT** shall furnish the **CITY** with proof of insurance in accordance with this Section.

The **CONSULTANT** 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 -- \$750,000 per claim and \$1,500,000 per occurrence.
3. Commercial automobile liability -- \$1,500,000 per accident.
4. Professional liability in the amount of \$1,500,000 per claim.

Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to the **CITY** prior to cancellation. **CONSULTANT** may use an Excess Limits policy that drops down and follows form to meet the required insurance limits.

The **CITY** 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.

**CONSULTANT** shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. **CONSULTANT** shall maintain workers' compensation insurance coverage for all members and employees of **CONSULTANT**'s business, except for those members who are exempted as independent **CONSULTANT**s under the provisions of §39-71-401, MCA.

**CONSULTANT** shall furnish **CITY** with copies showing one of the following: (1) proof of registration as a registered Contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent Contractors.



6. **AGREEMENTS OF CONSULTANT:** As an inducement to the execution of this **AGREEMENT** by the **CITY** and in consideration of the agreements to be performed by the **CITY**, the **CONSULTANT** agrees that:

A. Qualifications

The **CONSULTANT** is qualified to perform the services to be furnished under this **AGREEMENT** and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform.

B. Solicitation of Agreement

The **CONSULTANT** has not employed any person to solicit this **AGREEMENT** and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this **AGREEMENT**.

C. Facilities and Personnel

The **CONSULTANT** has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.

D. Subcontracting

None of the work or services covered by this **AGREEMENT** shall be subcontracted without the prior approval of the **CITY**.

E. Affidavits of Compliance

The **CONSULTANT** will, if requested by the **CITY**, furnish the **CITY** affidavits certifying compliance with the provisions of this Section.

7. **AGREEMENTS OF CITY:**

A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the City of Billings' portion of the project as designated in the scope of work.

B. Name a Project Manager who shall be the liaison between the Consultant and the City of Billings. For this project, the Project Manager for **CONSULTANT** designated is Christopher Breiland and the Project Manager for **CITY** designated is Lora Mattox.



8. **NONDISCRIMINATION:**

- A. The **CONSULTANT** 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 **CONSULTANT** 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 **CONSULTANT** 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 **CONSULTANT** shall state, in all solicitations or advertisements for employees to work on 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 **CONSULTANT** shall comply with any and all reporting requirements that may apply to it that the **CITY** may establish by regulation.
- D. The **CONSULTANT** shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this **AGREEMENT**, so as to be binding upon every such sub-consultant or vendor of the **CONSULTANT** under this **AGREEMENT**.
- E. The **CONSULTANT** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination (Exhibit "C").
9. **PERMITS, LAWS, AND TAXES:** The **CONSULTANT** shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this **AGREEMENT**. All actions taken by the **CONSULTANT** under this **AGREEMENT** shall comply with all applicable statutes, ordinances, rules and regulations. The **CONSULTANT** shall pay all taxes pertaining to its performance under this **AGREEMENT**.



10. **NONWAIVER:** The failure of either party at any time to enforce a provision of this **AGREEMENT** shall in no way constitute a waiver of the provision, nor in any way affect the validity of this **AGREEMENT** or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.
11. **DECLARATION OF NO FINANCIAL INTEREST:** The **CONSULTANT** hereby declares that he does not have any interest (including that of real estate agent or broker), direct or indirect, present or prospective, in any property described in Section 1 or in its sale, or any other interest, whether or not in connection with the property, which would conflict in any manner or degree with the performance of the services and the submission of impartial reports, and has not employed and will not employ, in connection with the services to be furnished under this **AGREEMENT**, any person having any such interest. Until the property is acquired by the **CITY** or excluded from its project by resolution of its governing body, the **CONSULTANT** and any employees of the **CONSULTANT**, so long as they are employed by the **CONSULTANT**, will not acquire any such interests and will not, for their own account or for other than the **CITY**, negotiate for any of the property, perform services in connection with the property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to the property.
12. **SUCCESSORS AND ASSIGNS:** This **AGREEMENT** and all of the covenants hereof shall inure to the benefit of and be binding upon the **CITY** and the **CONSULTANT** respectively and his partners, successors, assigns, and legal representatives. Neither the **CITY** nor the **CONSULTANT** shall have the right to assign, transfer, or sublet his interest or obligations hereunder without written consent of the other party.
13. **CHANGES IN WORK:** Any change in the scope of **CONSULTANT'S** services as stated in this **AGREEMENT** for whatever reason, will be negotiated between the **CITY** and the **CONSULTANT** and an amendment to this **AGREEMENT** will be issued with the appropriate change of services and **AGREEMENT** fee noted.
14. **LEGAL RELATIONS:** The **CONSULTANT** shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done.



15. **TERMINATION OF AGREEMENT:** The right is reserved by the **CITY** to terminate this **AGREEMENT** at any time upon not less than thirty (30) days written notice to the **CONSULTANT**. If one of the parties fails to comply with the terms and conditions of the Agreement, written notice may be provided describing the default. If the defaulting party fails to cure and correct the claimed default within a reasonable period specified in the notice, the non-defaulting party may terminate its services under the Agreement.

In the event the **CITY** terminates this **AGREEMENT**, the **CONSULTANT** shall be paid for the amount of work performed or services rendered to date of termination per the **AGREEMENT** fee.

16. **ENDORSEMENTS:** The **CONSULTANT** shall furnish signatures, statements, or other suitable means to signify responsible endorsement of work on all reports furnished by him.
17. **OWNERSHIP OF DOCUMENTS:** All information relating to the project and prepared under the terms of this **AGREEMENT**, including reports, data, recommendations, exhibits, analyses, and plans shall be deemed the property of the **CITY**. Reproducibles of all notes, reports, and plans shall be made available at the **CITY'S** request. **CONSULTANT** shall not be liable for modifications to documents prepared by **CONSULTANT** which are made without **CONSULTANT'S** advice after delivery to **CITY**, nor shall **CONSULTANT** be liable for their use in projects other than the Project outlined within this Agreement.
18. **PUBLIC INFORMATION:** The **CONSULTANT** shall not issue any statements, releases, or information for public dissemination without prior written approval of the **CITY**.
19. **PROPRIETARY RIGHTS:** If patentable discoveries or inventions should result from work required herein, all rights accruing from such discoveries or inventions shall be the property of the **CITY**. Pre-existing works created by **CONSULTANT** outside of the services for **CITY** but utilized in connection with such services shall continue to be owned by **CONSULTANT**.
20. **RECORDS:** The **CONSULTANT** shall maintain accounting records and other evidence pertaining to the cost incurred and to make the records available at all times during the **AGREEMENT** term and for three (3) years from the date of final payment. Such accounting records and other evidence pertaining to the cost incurred will be made available for inspections authorized by the **CITY** and copies thereof shall be furnished if requested.



- 21. **ATTORNEY’S FEES AND COSTS:** That in the event it becomes necessary for either Party to this **AGREEMENT** to retain an attorney to enforce any of the terms or conditions of the **AGREEMENT** or to give any notice required herein, then the prevailing Party or the Party giving notice shall be entitled to reasonable attorney’s fees and costs.
  
- 22. **LITIGATION LOCATION:** The parties agree that this **AGREEMENT** shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the **AGREEMENT** or the performance of its terms.
  
- 23. **MODIFICATION AND AMENDMENTS:** That any amendment or modification of this **AGREEMENT** or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this **AGREEMENT**.

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

**CITY OF BILLINGS, MONTANA**

**FEHR & PEERS**  
**CONSULTANT (Print Name Above)**

By \_\_\_\_\_  
**THOMAS W. HANEL,**  
**MAYOR**

By *Daniel Grayuski*  
**Print Name** *Daniel Grayuski*  
**Print Title** *Principal*

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
**BRENT BROOKS, CITY Attorney**



## EXHIBIT A SCOPE OF WORK

### HOSPITALITY CORRIDOR PLANNING STUDY

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The Billings Metropolitan Planning Organization (MPO) has identified the need to conduct a Corridor Study along Highway 87 (Main Street) beginning at the Lockwood I-90 Interchange, to the intersection of Airport Road in the City of Billings and Yellowstone County, Montana. This area is being called “The Hospitality Corridor” given the potential for land uses in the area focused on large events at METRA Park, including conference, dining and lodging opportunities.

The Study will provide an access plan for the above Hospitality Corridor, including identification of recommended streetscape improvements throughout the corridor, review of impacts of land use on the transportation system, which would include a traffic flow plan, bike/pedestrian amenities along the corridor, and a detailed discussion of potential designs of the intersections of Main Street and 1<sup>st</sup> Avenue North, Main Street and 4<sup>th</sup> Avenue North, and Main Street and 6<sup>th</sup> Avenue North. Extensive community input will be provided in the study development process. This Study should also look at the transportation interface between the Main Street corridor and the EBURD transportation network. A separate EBURD planning effort, known as the Exposition Gateway Master Plan, is directly adjacent to the study area of this study. The Exposition Gateway Master Plan will contemplate future land uses and policy changes to incentivize redevelopment of that particular area. The Hospitality Corridor Study will interface with this plan in that the access points to be analyzed as part of the Hospitality Corridor Study will be directly tied to the planning effort of the Exposition Gateway Master Plan. This Hospitality Corridor Study will require the Scope of Work and Document package to be completed within twelve (12) months of contract signing.

Below is a general outline of the anticipated scope of work. However, the final scope of work will be negotiated after completion of this contract.

#### Summary

- Identify current and future access points along the corridor
- Identify areas where there are traffic safety issues and recommended mitigation strategies
- Identify pedestrian and bicycle circulation within the corridor
- Provide definitive traffic analysis to assist in the design and construction of future transportation infrastructure improvements at major intersections and throughout the corridor
- Recommend streetscape improvements throughout the corridor that both align with the adjacent land uses and support the corridor as a main entryway into the Billings community



- Be consistent with other plans, including but not limited to the Billings Urban Area Long-Range Transportation Plan, Billings Area Bikeway & Trail Master Plan, East Billings Urban Renewal District Master Plan, I-90 Corridor Study, and Long Range Planning at METRA Park
- Coordinate closely with the Exposition Gateway Concept Plan
- Coordinate closely with MDT throughout the study process

Consultant will be required to update and receive input from the community through a public participation process that follows the 2009 Yellowstone County Board of Planning Participation Plan.

#### Deliverables

- Provide weekly project management reports to the City/County Planning Division.
- Provide copies of any public announcements and community meeting sign-in sheets (or similar)
- Steering Committee Meetings' minutes (or similar)
- Final Hospitality Corridor Study Plan

Note: The final plan shall be provided to the **CITY** by the **CONSULTANT** in the following manner: 15 printed copies, 10 compact discs in a pdf. electronic version and one electronic version that can be manipulated and edited for future updates.



## EXHIBIT B PROJECT COST



### **Hospitality Corridor Planning Study – Budget and Budget Justification**

This document outlines a proposed scope of work to document our team's budget assumptions for the Hospitality Corridor Planning Study. A detailed budget is shown on page 3 of this document. We anticipate that we will work with City staff on refining the budget if we are selected to perform this work.

#### **Task 1 – Existing Conditions Analysis**

In this task, the team will collect existing information along the corridor. Since our team members are involved with ongoing work with MDT on the corridor and the Exposition Gateway Concept Plan, we anticipate that we can collect this information quickly and efficiently. We will analyze travel patterns in the area and develop an active transportation mode deficiency plan. In addition, the team will analyze traffic at the key intersections along the corridor and identify deficiencies. With respect to transportation safety, we will analyze collision data on the corridor and compare to statewide or nationwide averages to identify any areas of concern. Also, we will review and summarize existing planning documents that are relevant to the area.

#### **Task 2 – Integration with Exposition Gateway Project and Land Use Planning**

To understand future travel patterns, traffic congestion levels, and active transportation needs, we need to consider the land use and redevelopment plans envisioned as part of the Exposition Gateway Concept Plan. Since we are the same team that is working on that project, we anticipate that this integration will be seamless and efficient. This land use and planning information will constitute the foundation for the transportation planning along the Hospitality Corridor to ensure a good linkage between the METRA Park area, regional trail network, existing facilities in the downtown area, and new growth in the Expo Gateway and EBURD areas.

#### **Task 3 – Identify Access Points, Pedestrian/Bicycle Circulation Improvements, and Vehicle Congestion Relief Concepts**

Based on the information in Tasks 1 and 2, we will develop a draft transportation, access, and mobility plan for the area for review by City staff and other stakeholders. We envision that this draft plan will address the congestion, mobility, and safety issues identified in Task 1, while supporting the land use changes identified in Task 2. This will be an iterative task where initial planning concepts will be reduced to a preferred alternative that balances all the needs on this complex corridor. This task will blend quantitative analyses of traffic, pedestrian/bicycle travel demand, and crossing treatments with qualitative assessments of land use and urban form integration and alignment with other planning efforts.

#### **Task 4 – Develop a Streetscape Concept Vision for the Corridor**

Based in part on Task 3, the team will develop a comprehensive Streetscape plan for the entire corridor. The goal will be to improve the aesthetics of the area, improve the walkability/bikability of the area, and highlight the corridor as a gateway to Billings. We envision that this streetscape plan will be valid beyond



the corridor itself and could establish an overall vision for the entire Main Street and 1<sup>st</sup> Avenue corridors. This streetscape plan will develop sample renderings and define innovative implementation ideas, including public/private partnerships and examples of creative financing from our experiences across the West.

#### Task 5 – Public Outreach

The public outreach program for the Hospitality Corridor Plan will be completely integrated with the Exposition Gateway project. We envision at least one planning charrette that focuses on the mobility issues and solutions in the Hospitality Corridor and a joint charrette with the Exposition Gateway project to discuss an integrated land use and planning approach in the corridor. Through our combined approach, we will not only be able to gain efficiencies by leveraging both projects, but we will be able to reduce stakeholder fatigue by seamlessly integrating the Hospitality Corridor and Exposition Gateway projects.

#### Task 6 – Documentation

We will document the outcomes of the tasks above into a series of memos. These memos will be reviewed by City staff and ultimately integrated into a draft report. Our team finds this approach to developing the documentation as we progress to streamline the review process and to lead to a higher quality final plan. In addition to a traditional plan, we will incorporate many visual simulations to help the public and decision-makers gain a better understanding of how to transform the Hospitality Corridor into a gateway to Billings.

#### Task 7 – Meetings and Project Management

Strong project management is critical to the success of this project and is necessary to ensure successful integration of the Hospitality Corridor and Exposition Gateway projects. On a similarly complex transportation master plan project in Redmond, Washington, Fehr & Peers held weekly calls with the City's project manager to provide status updates and address problems and conflicts before they impacted the budget or schedule.

In addition to tight project management, we envision a series of key meetings being critical to the success of this project. The project will start with a kickoff meeting to set the stage for the future planning work and the results of the preliminary analysis will be presented to the City staff and a steering committee. As described earlier, a detailed public involvement charrette is also envisioned. Lastly, a meeting to present the final Hospitality Corridor Plan will be held to present the mobility improvement concepts to the public and decision makers.



Detailed Budget

	Fehr & Peers		LMN		Studio Cascade		High Plains		Sanderson Stewart		Total	
	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost
Task 1	44	\$ 6,160	0	\$ 0	0	\$ 0	0	\$ 0	16	\$ 2,240	60	\$ 8,400
Task 2	8	\$ 1,120	4	\$ 520	0	\$ 0	16	\$ 2,000	0	\$ 0	28	\$ 3,640
Task 3	60	\$ 8,400	0	\$ 0	0	\$ 0	4	\$ 500	16	\$ 2,240	80	\$ 11,140
Task 4	8	\$ 1,120	60	\$ 7,800	0	\$ 0	8	\$ 1,000	0	\$ 0	76	\$ 9,920
Task 5	8	\$ 1,120	4	\$ 520	40	\$ 5,200	8	\$ 1,000	4	\$ 560	64	\$ 8,400
Task 6	60	\$ 8,400	8	\$ 1,040	0	\$ 0	0	\$ 0	4	\$ 560	72	\$ 10,000
Task 7	44	\$ 6,160	4	\$ 520	4	\$ 520	16	\$ 2,000	4	\$ 560	72	\$ 9,760
Labor Total	232	\$ 32,480	80	\$ 10,400	44	\$ 5,720	52	\$ 6,500	44	\$ 6,160	452	\$ 61,260
Travel		\$ 1,660		\$ 830		\$ 1,660						
											Travel Total	\$ 4,150
											Other Direct Costs	\$ 4,500
											Total	\$ 69,910



## EXHIBIT C DBE AND NON-DISCRIMINATION NOTICE

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### DBE Goals

There are no DBE/WBE goals for this work, but firms are strongly encouraged to utilize DBE firms if applicable. A Montana certified DBE consultant list is available and can be found on the MDT web page, <http://www.mdt.mt.gov/business/contracting/civil/dbe.shtml>

### Nondiscrimination Compliance

Consultants will be subject to Federal and Montana nondiscrimination laws and regulations (see attached notice).

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### NON-DISCRIMINATION NOTICE

During the performance of this Agreement, the Consultant (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 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, §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."

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 §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, sub-recipient 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.





Insured: Fehr & Peers  
Insurer: Hartford Casualty Insurance Co.  
Policy Number: 57SBAVA1664  
Policy Effective Date: 11/01/11  
Additional Insured: City of Billings

**EXCERPTS FROM: Hartford Form SS 00 08 04 05**  
**BUSINESS LIABILITY COVERAGE FORM**

**C. WHO IS AN INSURED**

**6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit**

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit. A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

**f. Any Other Party**

(1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury, "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(a) In the performance of your ongoing operations;

(b) In connection with your premises owned by or rented to you; or

(c) In connection with "your work" and included within the "products- completed operations hazard, but only if

(i) The written contract or written agreement requires you to provide such coverage to such additional insured; and

(ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to: "Bodily injury, "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including: inspection, or engineering

**E.5. Separation of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom a claim is made or "suit" is brought.

**E.7.b.(7).(b) Primary And Non-Contributory To Other Insurance When Required By Contract**

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

**E.8.b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)**

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

**EXCERPT FROM Hartford Form SS 04 38 06 01**

**HIRED AUTO AND NON-OWNED AUTO**

B. With respect to the operation of a "non-owned auto", WHO IS AN INSURED is replaced by the following: The following are "insureds":

d. Anyone liable for the conduct of an "insured", but only to the extent of that liability.