

DECEMBER 7, 2016

**FUNDING AGREEMENT BETWEEN
BILLINGS METROPOLITAN PLANNING ORGANIZATION AND THE
MONTANA DEPARTMENT OF TRANSPORTATION FOR CONSULTANT
SERVICES**

This Memorandum of Understanding (MOU) by and between the Billings Metropolitan Planning Organization (MPO), and the Montana Department of Transportation (MDT) establishes the funding the MPO will provide in conjunction with MDT planning monies for consultant services to perform a Household Travel Survey within Yellowstone County.

The estimated total cost for the project is approximately \$140,000. The priority was established by the Billings MPO through the 2017 UPWP and approved by the Policy Coordinating Committee (PCC) on September 13, 2016.

1. Purpose of Agreement

This agreement documents the roles, responsibilities, and funding requirements for the development of the Yellowstone County Household Travel Survey (SURVEY). This project will occur within Yellowstone County. The proposed activities include development of a household travel survey through recruitment of a representative sample, collection of survey data, geocoding dataset to include raw data files in DBF and .CVS format with final geocoded data files in ArcGIS shapefile format, and a final report of survey results.

2. Time of Performance

The term of this agreement will be for fourteen (14) months from the signing of this agreement unless extended by mutual agreement or terminated before that date as provided in Section 10, below.

3. Roles and Responsibilities

A. All Parties Agree That:

1. Development of the SURVEY will include monthly meetings with a technical advisory committee; meetings will be held in Billings with a conference call line.
2. Development of the SURVEY will include at least one Informational Meeting for the public to attend or another identified strategy to educate the public about the purpose and need.
3. Upon completion, the SURVEY will be adopted by the Billings PCC following local planning processes.

B. MPO:

1. Will manage and be the main point of contact for the consultant contract for services related to the SURVEY.
2. Will ensure deliverable deadlines are met and consultant contract stays within established study schedule and scope.
3. Will submit invoices for reimbursement to MDT on a monthly basis. All monthly invoices will be split 50/50 between the MPO and MDT.

C. MDT:

1. Will participate in Technical Advisory Committee and attend all meetings either in person or conference call.
2. Will provide technical assistance in relation to survey methodology and implementation.
3. Will reimburse the MPO within 30 days of receipt of invoice, with a 50/50 cost share.

4. Compensation

The Yellowstone County Household Travel Survey will be funded by the MPO and MDT as shown by the following itemized financial allocations. Montana's total federal award of SPR-PL funds were \$7,848,427 per CFDA # 20.205. FHWA is the federal awarding agency. DUNS # 068925759; FAIN #300000153L55E1

SURVEY

MPO PL Funds	(50 %)	\$ 70,000
MDT PL Funds	(50 %)	\$ 70,000
Total maximum:		\$140,000 (direct costs)

The MPO will not reduce their share of the project cost unless there is a proportional cost reduction to MDT. The total payment by MDT to complete the SURVEY shall not exceed the above-stated funding. Any scope revision or increase in project costs must be agreed to beforehand in writing.

For Grantee's claiming IDC for reimbursement, the IDC rate must be in accordance with 2 CFR Part 200.414 and Section E- Appendices III - VIII and approved by your federal cognizant agency. A copy of the IDC approval letter must be submitted to the Department and approved prior to any reimbursement. If the Montana Department of Transportation is your organization's primary source of federal funds, then a copy of your indirect cost plan must be submitted to MDT for review and approval. The percentage rate for indirect costs shall be maintained for the life of the project.

Section 17-1-106 MCA requires any state agency, including MDT that receives non-general funds to identify and recover its indirect costs. These costs are in addition to direct project costs. MDT's indirect cost rate is determined annually as a percentage of the project's direct costs to cover the project's share of MDT's indirect costs as defined by 2 CFR 200, Appendix VII for State & Local Governments. MDT's current indirect cost rate is 10.97% for state fiscal year 2017 (July 1, 2016 to June 30, 2017).

For this project, MDT will include a charge for the indirect costs at the current fiscal year indirect cost rate (as noted above 10.97% thru June 30, 2017), which amount will be applied toward MDT'S share of project contribution. Note: If this project extends across more than one fiscal year, more than one annual rate will be involved, as the rates may change during the life of the project.

The MPO will submit invoices for payment along with a letter approving payment and supporting documentation substantiating the amount requested to Statewide and Urban Planning Section, Transportation Planning Division, Montana Department of Transportation, 2701 Prospect Avenue, Helena MT 59620. MDT funds will be used to reimburse the MPO for costs attributed to the SURVEY. MDT will reimburse 50% of all invoices expenses included in the agreed upon scope of work. MDT has the authority to review and approve payment of the invoices submitted by the MPO. Reimbursement will not be made for any costs not clearly and accurately supported by the MPO's records and not submitted within sixty days of the date originally incurred. MDT shall reimburse the MPO within 30-days provided all the proper documentation has been submitted. MDT reserves the right to withhold 10% of its proportionate share of the total project cost until all supported claims filed with MDT have been settled.

5. Liaison

The liaison person for the DEPARTMENT is Katie Potts, 2960 Prospect Ave, Helena MT, 59620. Phone (406) 444-9240, Statewide & Urban Planning Section, Transportation Planning Division. The liaison person for the MPO is Scott Walker, 2825 3rd Avenue North Billings, MT, 59101. Phone (406) 247-8661.

6. Ownership of Documents

All notes, calculations, computer runs, specifications, reports, special studies, and other data prepared or collected under this agreement will become the property of the MPO and MDT throughout and upon completion of the project. The MPO will provide a printed copy and an electronic copy of the completed SURVEY, raw data files in DBF and .CVS format with final geocoded data files in ArcGIS shapefile format to MDT upon completion of the project.

7. Access to Records

It is expressly understood that the MPO is required to maintain full records of its performance and further to allow access to these records by MDT and the Montana Legislative Auditor and Legislative Fiscal Analyst when required by law. The MPO agrees to create and retain records supporting this Agreement for a period of three years after the completion date of this Agreement or the conclusion of any claim, litigation or exception relating to this Agreement taken by the State of Montana or a third party.

8. Insurance

The MPO will require any subcontractor performing work under this agreement to provide proof of the following insurance coverage prior to the date upon which work is to begin.

The proof of insurance or exemption must be valid for the entire agreement period.

- a. Comprehensive general liability insurance, including vehicle liability insurance, with limits acceptable to the MPO.
- b. Workers Compensation Insurance coverage valid in the State of Montana or proof of exemption thereof.

9. Nondiscrimination

The MPO will require during the performance of any work arising out of this agreement that the MPO, for itself, its assignees and successors, shall comply with all nondiscrimination regulations shown in Exhibit "A".

10. Termination

This agreement may be terminated for convenience by either party by that party mailing or faxing a written notice of termination to the other's liaison person. MDT may also terminate this agreement for default. If termination occurs due to default, the notice shall state the manner of the default, and offer the MPO an opportunity to explain the non-performance. If MDT finds that the MPO has a reasonable excuse for non-performance, which is beyond the control of the MPO, MDT may set up a new work schedule to allow the completion of the agreed upon work.

In any termination, MDT will make its contractual payments proportionate to the work performed at the time of termination and the MPO shall account for any property in its possession paid for with funds received from the MDT or supplied to it by MDT.

11. Liability

MDT will not be liable for any claims or suits related to the MPO financial participation in the proposed project, and the MPO will hold MDT harmless and immune from any such suits, and will indemnify MDT in the event of any loss incurred as a result of such claim or lawsuit.

12. Litigation

Controversy arising from this agreement may result in litigation. Arbitration, unless agreed to in writing and pursuant to law, is not available.

13. Venue

In the event of litigation concerning this Agreement, venue shall be in the First Judicial District of the State of Montana, Lewis and Clark County. This agreement shall be interpreted according to Montana law.

14. Agreement Modification

Any change in this agreement must be by written agreement of the parties.

15. Notice

All notices arising out of, or from, the provisions of this agreement shall be in writing and given to the parties at the address of the party above, either by regular mail or delivery in person.

16. Severability and Integration

If any single part, or parts, of this agreement are determined to be void, the remaining parts will remain valid and operative. This agreement, as written, expresses the total, final and only agreement of the parties relevant to its subject matter. No provision, expressed or implied, arising from any prior oral or written request, bid, inquiry, negotiation, contract, or any other form of communication shall be a provision of this agreement unless specifically provided within the written terms herein.

17. Audit Requirements

The MPO may be subject to the audit requirements of 2 CFR 200 Subpart F if the audit threshold in 2 CFR 200.501 is met. An audit must be conducted in compliance with 2 CFR

200 Subpart F if required. The audit must be completed and the data collection form and reporting package submitted to the Federal Audit Clearinghouse within the earlier of 30 calendar days after the receipt of the auditor's report(s) or nine months after the end of the audit period. For local governments and school districts, the MPO will provide the report to the State of Montana, Department of Administration, Local Government Services Bureau. All other subrecipients such as Tribal Communities and Non-Profit Organizations will provide the report to the State of Montana, Department of Transportation, Audit Services if audit findings are discovered.

18. Debarment and Suspension (E.O.s 12549 and 12689)

The Grantee shall obtain from its third party contractors certifications required by Department of Transportation regulations, "Government-wide Debarment and Suspension (Non-procurement)," 49 CFR Part 29, and otherwise comply with the requirements of those regulations a list of debarred entities is located at <https://www.sam.gov/portal/public/SAM/>.

19. Conflict of Interest (2 CFR 200.112)

The MPO must disclose in writing any potential conflict of interest to the MDT in accordance with applicable Federal awarding agency policy.

20. Mandatory Disclosures (2 CFR 200.113)

The MPO must disclose, in a timely manner, in writing to the MDT all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338, including suspension or debarment.

21. Internal Controls (2 CFR 200.303)

The MPO must establish and maintain effective internal controls that provide reasonable assurance to MDT that the MPO is in compliance with Federal statutes, regulations, and terms and conditions of the Federal award.

22. Political Activity (Hatch Act)

The MPO will comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508) which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

23. Certification Regarding Federal Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements. The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

24. Restriction on State Lobbying

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

WITNESS WHEREOF, the parties have caused this agreement to be executed.

Billings MPO

By: _____
Thomas W. Hanel, Mayor, City of Billings

Date: _____, 2017

STATE OF MONTANA - DEPARTMENT OF TRANSPORTATION

By: _____
Transportation Planning Division

Date: _____, 2017

Approved for Legal Content:

Approved for Civil Rights Content:

By: _____
Department Legal Services

By: _____
Department Civil Rights

YELLOWSTONE COUNTY HOUSEHOLD TRAVEL SURVEY

Attachment A

**MDT NONDISCRIMINATION
AND
DISABILITY ACCOMMODATION NOTICE**

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

Federal protected classes

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

State protected classes

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

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

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

(2) Non-discrimination:

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:

- i. Statement that PARTY does not discriminate on the grounds of any protected classes.
 - ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
 - iii. Contact information for PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
 - iv. Information on how to request information in alternative accessible formats.
- c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.

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

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

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

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

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment:

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

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to

be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

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

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

(7) Pertinent Non-Discrimination Authorities:

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

Federal

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by

- expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
 - The Federal Aviation Administration’s Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
 - Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).
 - Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

State

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

(8) Incorporation of Provisions: The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of

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