



CONSULTANT AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2017, 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 Kittelson & Associates, Inc., 101 S. Capitol Boulevard, Suite 301, Boise, Idaho 83702, hereinafter referred to as “**CONSULTANT**.”

WITNESSETH:

WHEREAS, the **CITY** proposes to develop a Billings MPO Travel Demand Model 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 6 months, from the execution of this **AGREEMENT**. This **AGREEMENT** may be extended on a month to month basis 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 \$125,000.00 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 **CONSULTANTS** 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 Andrew J. Daleiden and the Project Manager for **CITY** designated is Scott Walker.



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

Kittelsen & Associates, Inc.
CONSULTANT (Print Name Above)

By _____
THOMAS W. HANEL,
MAYOR

By _____
Print Name _____
Print Title _____

APPROVED AS TO FORM:

By _____
BRENT BROOKS, CITY Attorney



EXHIBIT A SCOPE OF WORK

Billings MPO Travel Demand Model

The Billings Metropolitan Planning Organization (Billings MPO) requests proposals from qualified firms or teams of firms with the appropriate expertise to develop a 2016 Travel Demand Model (TDM) for use by the Billings MPO that includes a mode choice step, and train MPO staff on how to build and use a TDM that incorporates the use of Geographic Information System Developer's Kit (GISDK) and the use of TransCAD's batch mode. Prior to this effort, the Montana Department of Transportation (MDT) developed and maintained the regional TDM FOR the MPO that did not include a mode choice step.

The MPO wishes to develop their own regional travel demand model that includes transit and bike/pedestrian modes. The area of the TDM will be Yellowstone County with attention to the Billings MPO boundary.

Below is a general outline of the anticipated scope of work. However, the final scope of work will be negotiated with the successful proposer.

Summary

1. Development of a 2016 Billings Travel Demand Model using TransCad 7.0 for Yellowstone County with attention to the Billings MPO Planning Boundary (Attachment E). The model is intended to help further community goals and improve transportation facilities and services in the Billings metropolitan area and will be used in the update process of the Long Range Transportation Plan by:
 - Relating the transportation system to existing and future land use and community plans;
 - Improving the multi-modal transportation circulation of people and goods, using both motorized and non-motorized transportation modes and facilities.
2. Training of MPO staff throughout the model development process including:
 - How to use the TDM for modeling alternative scenarios;
 - Providing assignment results;
 - The use of GISDK and batch mode.

The successful Consultant should have extensive experience in the design and implementation of Travel Demand Models within the TransCad software package.

This project will require the Base Year Model to be completed within approximately six (6) month of contract signing, this will coordinate with the update to the Billings MPO Long Range



Transportation Plan. The User Guide and staff training will need to be completed with 8 months of contract signing. The project will include, but not be limited to the following:

Major Tasks

1. **Project Scoping and Timelines.** After Consultant selection and contract work completed, a Model Scoping meeting will be held between the Consultant, MDT and the MPO. This will provide an opportunity to outline the process and timeline for the completion of tasks.
2. **Data Acquisition and QA/QC** The Consultant will collect, acquire or purchase needed data, organize and perform QA/QC on existing data including: 2016 housing and employment data, 2016 road network, and the Yellowstone County Household Travel Survey.
3. **Base Year Model.** The Consultant will develop a 2016 base year model that contains the complete road network and traffic analysis zones (TAZ). The road network will contain the following characteristics: speed, capacity, travel time, and functional classification. The TAZ's will represent areas of similar land use and contain housing and employment data. The base model will be calibrated to base year traffic counts from local and state sources. Model must be calibrated to meet the standards set by the Federal Highway Administration's (FHWA) Transportation Model Improvement Program (TMIP).
4. **Mode Choice.** The Consultant will design and develop a mode choice model for peak and off-peak time periods for all trip purposes. The model should account for trips by auto, shared ride and bus. If reasonable for the Billings MPO (given the results of the household travel survey) the model should include bicycling and walking modes and the ability to count transfers between modes per trip. This mode choice model will be developed using the data from the Yellowstone County Household Travel Survey (July 2017).
5. **Modeling Alternatives.** The Consultant will develop a process that includes the use of macros (GISDK), to be used by MPO staff, to model the changes to the network resulting from improvements such as new roadways, higher capacity roadways and multi-modal facility installation, such as bike, pedestrian and transit facilities.
6. **User Training/Development of Documentation.** As part of the development of the regional model, the Consultant will provide MPO staff with the necessary training to operate the model within the TransCad Version 7.0 platform. Develop a set of documents outlining the development process and user guidelines and standards based on best practices.
 - a. **Final User Training.** The Consultant shall instruct MPO staff on the proper procedures to operate the model and provide model results. The Consultant shall offer working training sessions for one-on-one training with MPO staff and present an overview of the development process.



- b. Documentation. The Consultant shall prepare a user guide that outlines: 1) the steps used to operate the TDM and 2) standards/best practices that are used by TDM modelers. MPO and MDT will have an opportunity to review and comment on the guide during the development process.

PROJECT DELIVERABLES

During the model development and execution process, as applicable, the following items will be delivered:

- Provide a Work Plan and timeline (i.e. Gantt chart) of the various project deliverables, including the time for the MPO and MDT reviews of draft deliverables.
- Weekly email updates of project status to City-County Planning Division.
- Documentation and review of the QA/QC process used on the input data i.e. housing, employment, road network, trip purposes, etc.
- Documentation and review of the efficacy of the mode choice model including its parameters. This documentation should be provided after the completion of the mode choice step but well before the full model is complete.
- A document outlining all the methods and variables used in the development of the TDM including the following validation test results: percent RMSE by functional class, screenline/cutlines, backcasting, average trip length for Home Based Work, and analysis of a linear model relating AADTs and modeled volumes.
- Documentation and GISDK source code.
- A fully functional Regional Travel Demand Model and all associated documentation, manuals and files.



EXHIBIT B Project Cost

Project Budget - Kittelson & Associates, Inc.

LABOR ESTIMATE - Billings MPO Travel Demand Model - SW09152017

Task	Daleiden, Andrew	Aronson, Mike	Tsang, Lillian	Crisafi, Jon	Gao, Miao	Anderson, Doug	Munn, Dean	SUBTASK/ TASK HOURS	SUBTASK/ TASK COST								
	Project Principal	Project Manager	Network Development / Calibration	Land Use / Roadway	Modeler/Analyst	QA/QC	Model Design / GISDK										
	AJD	MNA	LST	JCC	MXG	DE	DM										
010 Project Scoping																	
Scoping Meeting	8	10	2		2	2	10	34	\$6,124								
Reimbursable Expense	2-day trip X 2 1-person trips									\$2,000							
Task #010 - Subtotal									8	10	2	0	2	2	10	34	\$8,124
020 Data Acquisition and QC																	
Land Use Data	2	20		40				62	\$9,706								
Transportation Networks	4	4	20	20	40	12		100	\$14,490								
Survey Data		20			40			60	\$9,403								
Reimbursable Expense	Purchase InfoUSA Data									\$3,000							
Task #020 - Subtotal									6	44	20	60	80	12	0	222	\$36,598
030 Base Year Model																	
TAZ System	2	4	8		24			38	\$5,691								
Trip Generation	2	8	12		8			30	\$5,234								
Trip Distribution	2	4	8		16			30	\$4,678								
Trip Assignment		4	4		8			16	\$2,580								
Model Validation	2	8	20		40	16	60	146	\$22,128								
Reimbursable Expense	2-day trip X 2 1-person trips									\$2,000							
Task #030 - Subtotal									8	28	52	0	96	16	60	260	\$42,311
040 Mode Choice																	
Mode Choice		8	8		8		30	54	\$8,671								
Reimbursable Expense										\$0							
Task #040 - Subtotal									0	8	8	0	8	0	30	54	\$8,671
050 Modeling Alternatives																	
Modeling Alternatives	4	4	12		12			32	\$5,258								
Reimbursable Expense										\$0							
Task #050 - Subtotal									4	4	12	0	12	0	0	32	\$5,258
060 User Training/Documentation																	
User Training	8	4	32					44	\$8,009								
Documentation	4	8	24		32	4	10	82	\$12,864								
Reimbursable Expense	2-day trip X 3 1-person trips									\$3,000							
Task #060 - Subtotal									12	12	56	0	32	4	10	125	\$23,873
TOTAL HOURS									38	106	150	60	230	34	110		
LABOR RATE									\$192.93	\$217.05	\$174.93	\$124.47	\$126.55	\$150.00	\$150.75	TOTAL HOURS	
LABOR COST									\$7,331	\$23,008	\$25,239	\$7,468	\$29,106	\$5,100	\$16,583	728	

TOTAL PROJECT ESTIMATE

\$124,835



EXHIBIT C DBE AND NON-DISCRIMINATION NOTICE

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).

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.

