



## 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 obtain information regarding the development of a 2018 Billings Urban Area Long Range Transportation Plan and update the 2008 Public Participation Plan 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 15 months, from the execution of this **AGREEMENT**. This **AGREEMENT** may be extended on a month to 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 \$225,000.00 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**

**Kittelson & 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

2018 Billings Urban Area Long Range Transportation Plan 2008 Public Participation Plan Update

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The Yellowstone County Board of Planning (YCBP) is the designated Metropolitan Planning Organization (MPO) for the Billings Urban Area. The YCBP is required to develop a Long Range Transportation Plan every four years. The below scope of work was developed to bring the plan into compliance with all FAST-Act requirements, including specific tasks to bring plan elements into compliance with new legislative requirements. Below is a general outline of the anticipated scope of work.

### Summary

#### **Public Participation Plan Scope:**

- The PPP shall be designed in accordance with Federal Regulations and Codes including regulations of the FAST-Act.
- Outline the benefits and need for public participation in the Transportation Planning process.
- Develop a PPP that describes the MPO's typical processes, timelines, public notification and participation requirements associated with Transportation Planning.
- For the MPO, develop a Public Participation Strategy, Guidelines, Tools and Policy.

#### **Long Range Transportation Plan Scope:**

- Review and incorporate all FAST-Act legislation requirements for plan compliance.
- With development of the PPP, identify the public participation efforts as part of this transportation plan update.
- With data collected by the YCBP, update existing land use and transportation conditions data in the 2014 Transportation Plan, the planning horizon for this project is to the year 2040.
- With data from the 2017 Billings Area Bikeway and Trail Master Plan and the YCBP, update the non-motorized components within the 2014 Transportation Plan.
- The consultant for the LRTP update will be responsible for assigning a growth rate for the planning area and assigning growth – housing and employment – to areas within the planning boundary, developing alternatives for the City run, etc. Review and identify long and short range transportation projects for inclusion in the updated plan. Fiscal analysis and constraint is required for this element.
- Review and update the Public Transit and Transportation Element Section. Including, analyzing the community's perception of what role Transit should play in the overall transportation Plan for the next 20 years.
- Review and update the Freight Movement Services and Facilities Section to include but not limited to the location of distribution centers, study of the street network that serves these centers and potential improvements.



- Within the study area review and identify historical and forecasted rail freight trends, review rail operating systems and identify deficiencies in regards to impacts to local traffic movements and identify potential funding sources to improve or mitigate deficiencies.
- Review and update the Safety Section that will focus on analysis of crash data to identify and prevent crashes related to driver behavior as well as transportation infrastructure. To be effective, the safety section should focus on education, enforcement, engineering, and emergency medical services. The information located within the Billings Community Transportation Safety Plan should be incorporated within this section.
- Review and update the Security Section to include the consideration and implementation of projects, strategies, and services that will address increasing the security of the transportation system for motorized and non-motorized users.
- Through analysis, future projects and traffic modeling assumptions, identify potential areas within the study area for further planning.
- Coordinate closely with MDT throughout the plan development to ensure compliance with Federal and State regulations.
- Review and update the Functional Classification Map.

#### 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 Functional Classification Map
  - 15 printed maps
  - 1 electronic pdf
- Final Public Participation Plan and Billings Urban Area Long Range Transportation Plan to include:
  - 15 printed copies
  - 1 electronic writable format
  - 1 digital interactive website pdf. copy



# EXHIBIT B Project Cost

## Project Budget

Project Name: 2018 Billings Urban Area LRTP & PPP Update  
 Project Manager: AJD  
 KAI Project Number: 21353  
 Date: Sep 28, 2017

LABOR ESTIMATE - 2018 Billings Urban Area LRTP & PPP Update			Kittelson & Associates, Inc.										DOWL		
Task	Notes	Staff	Daleiden, Andy	Worth, Phill	Crsaft, Jon	Dartnell, Camille	Austin, Robyn	Mah, Susan	Aronson, Mike	Tsang, Lillian	Enderson, Doug	Nicolai, Sarah	Gueff, Ryan	SUBTASK/ TASK HOURS	SUBTASK/ TASK COST
			AJD	PSW	JCC	CAD	RLA	SLM	MNA	LST					
<b>001 Project Management</b>															
Project Coordination / Progress Reports / Invoices	15 months		45								30			75	\$14,294
Steering Committee	7 meetings (4 in-person by KAI)		66			42					14			122	\$20,367
Reimbursable Expense															\$3,035
		Task #001 - Subtotal	111	0	0	42	0	0	0	0	44	0	0	197	\$37,696
<b>002 Public Involvement</b>															
Project Website							8							8	\$834
Interactive Map Survey						8	16							24	\$2,469
MetroQuest							20							20	\$2,085
Open Houses (2)			32	2		32	50	16			8		8	148	\$20,035
Stakeholder Interviews (10)			20								20			40	\$7,420
Draft PPP			4	1			50	8			8	12		83	\$10,831
Final PPP			2				8	2						12	\$1,546
Reimbursable Expense															\$5,326
		Task #002 - Subtotal	58	3	0	40	152	26	0	0	36	12	8	335	\$50,545
<b>003 Plan Elements</b>															
Review Plans			1		8	8								17	\$2,075
Agency and Stakeholder Involvement			1				8							9	\$1,045
Goals, Objectives, & Performance Measures			8	2		8		20			8	8		54	\$8,538
Land Use			8		12	12								32	\$4,484
Streets & Highways (includes modeling and ops analysis)			16	2	40	80			8	60	24		24	254	\$36,354
Pedestrian and Bicycle Facilities			2		4	12								18	\$2,154
Public Transit and Transportation			2		4	8								14	\$1,754
Rail			2		4	8					8			22	\$3,034
Truck			2		4	8					8			22	\$3,034
Safety			2		4	8					16	8	32	58	\$7,582
Security			2		4	8								14	\$1,754
Recommended Projects			8	1	32	32					16			89	\$11,939
Financial Analysis / Fiscal Constraint			8	1	16	8								33	\$4,850
Conformity			4											4	\$844
Reimbursable Expense															\$0
		Task #003 - Subtotal	66	6	128	192	8	20	8	60	80	16	56	640	\$89,441
<b>004 LRTP &amp; Infographics</b>															
Draft Plan			12	4	32	32	24	20			12	8		144	\$19,649
Final Plan			2		4	4	8	4						22	\$2,768
Infographics			1		2	2	4	16						25	\$3,413
Reimbursable Expense															\$0
		Task #004 - Subtotal	15	4	38	38	36	40	0	0	12	8	0	191	\$25,829
<b>005 Functional Classification Map</b>															
Draft FC Map			4	2	12			2			8			28	\$4,480
Final FC Map			1		2			1						4	\$622
Reimbursable Expense															\$0
		Task #005 - Subtotal	5	2	14	0	0	3	0	0	8	0	0	32	\$5,101
<b>006 Plan Adoption Support &amp; Promotion</b>															
TAC			8								2			10	\$2,008
City Council			8								2			10	\$2,008
P&Z			8								2			10	\$2,008
PCC			8								2			10	\$2,008
Plan Promotion			4				8							12	\$1,678
Reimbursable Expense															\$2,735
		Task #006 - Subtotal	36	0	0	0	8	0	0	0	8	0	0	52	\$12,444
<b>TOTAL HOURS</b>			291	15	180	312	204	89	8	60	188	36	64	<b>TOTAL HOURS</b>	<b>TOTAL LABOR</b>
<b>LABOR RATE</b>			\$210.98	\$235.43	\$132.92	\$100.06	\$104.25	\$144.92	\$228.14	\$185.34	\$160.00	\$175.00	\$100.00	<b>TOTAL HOURS</b>	<b>TOTAL LABOR</b>
<b>LABOR COST</b>			\$61,394	\$3,531	\$23,926	\$31,220	\$21,267	\$12,898	\$1,825	\$11,120	\$30,080	\$6,300	\$6,400	<b>TOTAL HOURS</b>	<b>TOTAL LABOR</b>
															<b>\$209,962</b>

<b>TOTAL REIMBURSABLES</b>	\$11,096
<b>TOTAL KAI FEES</b>	\$167,182
<b>TOTAL SUB FEES</b>	\$42,780
<b>TOTAL PROJECT BUDGET</b>	\$221,058



## 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.



## EXHIBIT D CERTIFICATE OF LIABILITY INSURANCE

<b>ACORD</b>	Client#: 763494	KITTEASC	DATE (MM/DD/YYYY) 10/18/2017
<b>CERTIFICATE OF LIABILITY INSURANCE</b>			
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.			
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).			
<b>PRODUCER</b> USI Kibble & Prentice PR 601 Union Street, Suite 1000 Seattle, WA 98101	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 206 441-6300      FAX (A/C, No): 610-362-8528 E-MAIL ADDRESS: PL.CertRequest@usi.com		
<b>INSURED</b>	<b>INSURER(S) AFFORDING COVERAGE</b> NAIC # INSURER A : Hartford Casualty Insurance Com      29424 INSURER B : XL Specialty Insurance Company      37885 INSURER C : INSURER D : INSURER E : INSURER F :		
<b>INSURED</b>		Kittelson & Associates, Inc. 610 SW Alder Street, Suite 700 Portland, OR 97205	

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDSUBR INSR WVR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:		52UUNPT3504	01/01/2017	01/01/2018	EACH OCCURRENCE      \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence)      \$1,000,000 MED EXP (Any one person)      \$10,000 PERSONAL & ADV INJURY      \$1,000,000 GENERAL AGGREGATE      \$2,000,000 PRODUCTS - COMP/OP AGG      \$2,000,000 \$
A	AUTOMOBILE LIABILITY  <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		52UUNPT3504	01/01/2017	01/01/2018	COMBINED SINGLE LIMIT (Ea accident)      \$1,000,000 BODILY INJURY (Per person)      \$ BODILY INJURY (Per accident)      \$ PROPERTY DAMAGE (Per accident)      \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE      \$ AGGREGATE      \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) if yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <b>N</b>	52WEGB9736	01/01/2017	01/01/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT      \$1,000,000 E.L. DISEASE - EA EMPLOYEE      \$1,000,000 E.L. DISEASE - POLICY LIMIT      \$1,000,000
B	Professional Liability		DPR9909525	01/01/2017	01/01/2018	\$2,000,000 per claim \$4,000,000 annl aggr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
**RE: KAI PN 20896 - Billings Regional Travel Demand Model.**  
 The General Liability and Automobile Liability policies include an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder, only when there is a written contract that requires such status, and only with regard to work performed on behalf of the named insured. The General Liability and Automobile Liability policies include a Waiver of Subrogation endorsement in favor of the Certificate Holder as referenced above.

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
City of Billings, Montana P.O. Box 1178 Billings, MT 59103	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE <i>Jan A. Ryan</i>