



THIS AGREEMENT is made and entered into _____ 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 600, Boise, Idaho 83702, hereinafter referred to as "**CONSULTANT**."

WITNESSETH:

WHEREAS, the **CITY** proposes to develop the 2023 Billings Urban Area Long Range Transportation 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 sixteen (16) months, from the execution of this **AGREEMENT**. This **AGREEMENT** may be extended for six (6) months by mutual agreement of both parties, in writing, thirty (30) days prior to termination of each term.

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 \$269,801.00.

Except as otherwise specified herein, the **CONSULTANT** shall invoice the **CITY** monthly (or on such other basis as the Parties may mutually determine) for all services rendered pursuant to this **AGREEMENT**. Such invoices shall specify the services provided to the **CITY** during the preceding month and identify the applicable fees, and shall be accompanied by reasonable documentation or other reasonable explanations supporting such charges.



Except as otherwise specified herein, the **CITY** shall pay, net of applicable withholding tax, if any, the **CONSULTANT** for said invoice within thirty (30) days after receipt.

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.

The prices established in this **AGREEMENT** may be extended to other political subdivisions within the State of Montana solely at the **CONSULTANT'S** discretion.

4. INCORPORATION BY REFERENCE: All exhibits and addenda attached hereto, as well as any bid or proposal referenced, are hereby incorporated into this **AGREEMENT** and made a part hereof. If there is any conflict between such exhibits or addenda and the terms of this **AGREEMENT**, the terms of this **AGREEMENT** shall control.

5. 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.

6. INDEMNITY:

The **CONSULTANT** SHALL:

- A. Indemnify and hold **CITY**, its officers, agents and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of **CONSULTANT** or its agents or employees.
- B. Not indemnify and hold the **CITY** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the **CITY** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- C. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **CITY** and the **CONSULTANT**, the **CONSULTANT** shall indemnify and hold the **CITY** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, to the extent caused by the **CONSULTANT'S** or any subcontractor's



wrongful or negligent acts occurring as a result from the **CONSULTANT'S** performance pursuant to this **AGREEMENT**.

The **CITY** SHALL:

- D. Indemnify and hold **CONSULTANT**, its officers, agents and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of **CITY** or its agents or employees.
- E. Not indemnify and hold the **CONSULTANT** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the **CONSULTANT** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- F. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **CONSULTANT** and the **CITY**, the **CITY** shall indemnify and hold the **CONSULTANT** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, to the extent caused by the **CITY'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CITY'S** performance pursuant to this **AGREEMENT**.

7. INSURANCE:

- A. 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 liability assumed under an insured agreement and personal injury coverage's -- \$750,000 per claim and \$1,500,000 per occurrence.
- 3. 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.

The **CITY** shall be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies.



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 contractors 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.

Specific Insurance Requirements for Cyber/Data Information Security:

CONSULTANT shall purchase and maintain cyber/information security insurance coverage with combined single limits for each wrongful act of \$2,000,000 per occurrence to cover the unauthorized acquisition of personal information such as social security numbers, credit card numbers, financial account information, or other information that uniquely identifies an individual and may be of a sensitive nature in accordance with §2-6-1501, MCA through §2-6-1503, MCA.

If **CONSULTANT** maintains higher limits than the minimums shown above, the **CITY** requires and shall be entitled to coverage for the higher limits maintained by the **CONSULTANT**. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the **CITY**. Such insurance must cover, at a minimum, privacy notification costs, credit monitoring, forensics investigations, legal fees/costs, regulatory fines and penalties, and third-party liability settlements or judgements as may be caused by any act, omission, or negligence of the **CONSULTANT'S** officers, agents, representatives, assigns or subcontractors.

Note: If occurrence coverage is unavailable or cost-prohibitive, the CITY will accept 'claims made' coverage providing the following conditions are met:

1. The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work;
2. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work; and,
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Proposer must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.



8. **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. All services under this **AGREEMENT** shall be performed with the care and skill utilized by members of **CONSULTANT'S** profession practicing under similar circumstances at the same time and in the same locale.

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.

9. **AGREEMENTS OF CITY:**

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

B. For this project, the Project Manager for **CONSULTANT** designated is Andrew J. Daleiden and the Project Manager for the **CITY** designated is Scott Walker.

10. **DBE GOALS AND NONDISCRIMINATION:**

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).

Rev. 01/2022

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, income-level & 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, ancestry, age, disability mental or physical, political or religious affiliations or ideas, military service or veteran status, vaccination status or possession of immunity passport

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

A. 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.

B. 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. The PARTY will provide notice to its employees and the members of the public that it serves that will include the following:

i. A statement that the PARTY does not discriminate on the grounds of any protected classes.



- ii. A statement that the 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 the 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, the 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 the PARTY does not discriminate on the grounds of any protected class.

C. 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 MDT 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. The PARTY must include the above assurance in each contract/agreement the PARTY enters.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

11. **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**.
12. **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.
13. **CONFLICT OF INTEREST:** **CONSULTANT** shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with **CITY'S** interest. During the term of this **AGREEMENT**, **CONSULTANT** shall not accept any employment or engage in any consulting work which creates a conflict of interest with **CITY** or in any way compromises the services to be performed under this **AGREEMENT**. **CONSULTANT** shall immediately notify **CITY** of any and all violations of this Section upon becoming aware of such violation.
14. **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.
15. **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.
16. **LEGAL RELATIONS:** The **CONSULTANT** shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done.
17. **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**.



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.

18. **ENDORSEMENTS:** The **CONSULTANT** shall furnish signatures, statements, or other suitable means to signify responsible endorsement of work on all reports furnished by him.
19. **SYSTEM SECURITY:** The **CONSULTANT** shall ensure systems delivered under this **AGREEMENT** are adequately secure. For purposes of this **AGREEMENT**, adequate security is defined to require compliance with federal and State of Montana security requirements and to ensure freedom from those conditions that may impair the **CITY** or State's use of its data and information technology or permit unauthorized access to the **CITY** or State's data or information technology.

The **CITY** and State have established control standards and policies that align with the NIST Cybersecurity Framework. The latest revision of NIST SP 800-53 is used for control adherence evaluation established after developing a security categorization utilizing FIPS PUB 199. Thus, **CONSULTANT** shall provide reasonable proof, through independent audit reports, security scans of operating systems, code or the technology environment provided; that the system specified under this **AGREEMENT** meets or exceeds federal and State of Montana security requirements to ensure adequate security and privacy, confidentiality, integrity, and availability of the **CITY** or State's data and information technology. Annual assurance statements shall be delivered to the Contract Liaison. Annual assurance statements must contain a detailed accounting of the security controls provided and must be in the form of a NIST Security Assessment Report or FedRAMP Security Assessment Report.

Prohibited Activities and Spoofing. **CONSULTANT**, Licensor and its officers, employees, agents, subcontractors, and affiliated users, shall not violate or attempt to violate the security of the **CITY** or State's network or interfere or attempt to interfere with the **CITY** or State's systems, networks, authentication measures, servers or equipment, or with the use of or access to the **CITY** or State's network by any other user. Such prohibited activity includes (i) accessing or logging into a server where access is not authorized; (ii) unauthorized probing, scanning, or testing the security or vulnerability of the **CITY** or State's network or other systems; and (iii) attempting to portray itself as the **CITY** or State, or an affiliate of the **CITY** or State, or otherwise attempting to gain access, without authorization, via the **CITY** or State's network or systems to any account or information technology resource not belonging to **CON**

SULTANT, Licensor or its officers, employees, agents, subcontractors, and affiliated users ("Spoofing"). **CONSULTANT** or Licensor shall not perform unauthorized Spoofing or scanning of any kind, including user account identity. Systems shall not Spoof the billings.mt.gov or mt.gov domains or engage in Email Spoofing. Email Spoofing is the creation of email messages with a forged sender address. For example, Email Spoofing includes creating or sending emails using the **CITY** or State's domain.

20. **OWNERSHIP OF DOCUMENTS:** Upon final payment to **CONSULTANT**, 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. Notwithstanding the foregoing, **CONSULTANT** shall retain its rights in pre-existing and standard scripts, databases, computer software, and other proprietary property. Rights to intellectual property that is not specifically designed or created exclusively for the **CITY** in the performance of this **AGREEMENT** shall also remain the property of the **CONSULTANT**.

- 21. **PUBLIC INFORMATION:** The **CONSULTANT** shall not issue any statements, releases, or information for public dissemination without prior written approval of the **CITY**. All materials related to this **AGREEMENT** and services provided are considered public records under Article II, Section 9 of the Montana Constitution and §§ 2-6-102 and 7-1-4144, MCA and may be distributed by written request pursuant to Montana's Constitutional Right to Know or Public Records Acts.
- 22. **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**.
- 23. **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.
- 24. **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.
- 25. **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.
- 26. **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.



**WILLIAM A. COLE,
MAYOR**

SIGNATURE

ANDREW J. DALEIDEN

PRINT NAME

APPROVED AS TO FORM:

**SENIOR PRINCIPAL ENGINEER
PRINT TITLE**

CITY ATTORNEY'S OFFICE

ATTEST:

DENISE BOHLMAN, CITY CLERK



EXHIBIT A BACKGROUND AND SCOPE OF WORK

Background

In 2018, the Billings Metropolitan Planning Organization (MPO) adopted a Long-Range Transportation Plan (LRTP) that is the framework to guide the development and implementation of a multimodal transportation system. The planning process included a comprehensive update of the goals and objectives, assessed 2017 land use and transportation conditions and forecasts for the target year of 2040, and developed a preferred funding scenario for a balanced multi-modal transportation system.

For urbanized areas exceeding a population of 50,000, the existence of a Metropolitan Planning Organization (MPO) is necessary to meet federal requirements for *obtaining* and *expending* federal transportation funds. Specifically, the federal government requires that each urbanized area, as a condition to the receipt of federal capital or operating assistance, have in place a *continuing, cooperative, and comprehensive transportation (3-C) planning process*. This 3-C process must result in plans and programs consistent with the comprehensively planned development of the urbanized area. In order to demonstrate that a 3-C planning process is being implemented the MPO must periodically prepare and adopt a minimum 20-year long-range transportation plan (per the requirements of 23 CFR 450.306, 316 and 322). To satisfy federal planning requirements the MPO has prepared a Scope of Services to hire a consultant team (hereby known as the Consultant(s)) to assist with the development and adoption of the next Long-Range Transportation Plan (LRTP).

The LRTP update will have 2045 as the target horizon year. The adopted plan must be fiscally constrained and implementable by the appropriate local and state transportation agencies. The LRTP will improve on long-range and short-range strategies/actions that lead to the development of an integrated multimodal transportation system to facilitate the safe and efficient movement of people and goods. It will be developed with regards to the intent and requirements of the Infrastructure Investment and Jobs Act (IIJA), and requirements stipulated by the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Montana Department of Transportation (MDT). The 2045 LRTP update will continue to be multimodal in nature including transit, pedestrian facilities, bikeways and highway/street transportation, and other transportation systems including truck and rail.

The following is a list of the minimum work required under this contract. Additional tasks and work elements may be added or deleted during contract negotiations. Upon conclusion of the negotiation process and before proceeding with work tasks, the selected consultant will be required to prepare a final work plan for inclusion into a contract agreement. The consultant will be required to complete all work under this contract within the budget for this project by August 31, 2023.

The objectives of the 2023 Long Range Transportation Plan Update are:

- Update existing conditions and long-term outlook for the Billings urban area transportation system.
- Ensure the LRTP update includes appropriate performance-based planning that meets federal, state and local requirements and community goals.
- Ensure consistency with area infrastructure plans such as the 2016 Billings Area Bikeway and Trail Master Plan.
- Identify opportunities to increase consistency between the LRTP and other regional plans and policies such as the Billings and Lockwood Growth Policies, Billings Community Transportation Safety Plan, the City of Billings Complete Streets Policy, annexation policies, Capital Improvement Programs, and other infrastructure plans.
- Develop analyses and recommendations on how Billings transportation system can be enhanced or improved through emerging technologies such as signal optimization and Intelligent vehicle-to-infrastructure communication systems, and electric vehicle usage.
- Evaluate long-term financial outlook and transportation system improvement costs in order to better align funding with plan goals.
- The consultant will develop a 2019 base year travel demand model with associated documentation outlining model development, parameters, and model validation and reasonableness checks per Federal Highway Administration's (FHWA) Travel Model Improvement Program (TMIP). Consultant will provide and input projected growth for future year model (2045) and complete model alternative runs. The Billings MPO Area Travel Demand Model will be available for use if so desired by the successful consultant. This model was developed in the Trans Cad format. In addition, the MPO has developed a 2016 Household Travel Survey if requested by successful consultant.
- The 2018 and subsequent amendments list transportation projects broken into committed, recommended, and illustrative types. Develop a review and prioritization process to evaluate existing listed projects and identify new projects. This process will be used for the Project Oversight Committee, Local Officials and interested public.

Project Tasks – Scope of Work

Throughout the Transportation Planning Process, the Consultant shall provide the following:

- 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)

Task 1: Project Schedule, Work Plan, Steering Committee Activity

Required analysis:

- The consultant shall develop and present a proposal outlining all work and deliverables of the 2045 Long Range Transportation Plan update. The MPO staff will use this work plan to monitor and assess progress of the LRTP update. This includes, but is not limited to a detailed project schedule that identifies key task deadlines and/or milestones, presentations, and public involvement activities. The consultant shall also provide a work plan that outlines the project approach including coordination with the MPO Project Manager, expectations for LRTP Committee meetings, expectations for public involvement activities and involvement of planners and community stakeholders (public and private sector).

Task 2: Public Involvement Plan

Required analysis:

- This project will include a robust public involvement process. The consultant's public participation plan shall be consistent with the MPO's 2018 Public Participation Plan. In order to gather significant input on local concerns, the consultant shall assist staff in conducting activities in the community such as meetings, open houses and/or workshops to address transportation related concerns in the urbanized area.

- In addition to open houses, workshops and committee meetings, the MPO encourages innovative public involvement and strategies to underrepresented and disadvantage populations. The consultant will be expected to present a plan that incorporates innovative and wide-ranging list of involvement activities with elements that complement each other. Additional activities that may be considered in the public participation plan include, but are not limited to:
 - Focus group interviews;
 - On-line forums and virtual open-houses;

- Interactive on-line mapping and input opportunities;
- Surveys
- Dedicated project website;
- Social media

Task 3: Existing Conditions and Deficiencies Review

The consultant should review existing relevant background data and documentation to develop an updated summary of existing conditions within the Planning Area and identify existing transportation system deficiencies. The MPO staff will provide all background data and information.

Identification of deficiencies should consider all modes of transportation and include safety, connectivity, integration, congestion/level of service, travel time, people and goods movement, maintenance and preservation, and mobility and accessibility.

Required analysis:

- In support of travel demand model development, the MPO will provide data from the Billings/Yellowstone County Household Travel Survey. MDT will provide shapefiles for the 2019 road network containing roadway characteristics and AADT information and 2019 Traffic Analysis Zones (TAZ) with socioeconomic data. The travel demand model will be used to simulate existing 2019 travel patterns, forecast future traffic volumes and allow for analysis of alternative transportation improvements.
- Existing conditions for level of service/congestion shall be obtained.
- Review and analyze progress on performance measure identified in the 2018 update.

Background data and information to review (not limited to):

- 2018 Long-Range Transportation Plan
- Transportation and land use considerations of the Billings and Lockwood Growth Policies
- 2016 Bike and Trail Master Plan
- Locally adopted Planning Studies, public facility plans and related development regulations
- 2016 Community Transportation Safety Plan and associated crash data
- 2020-2024 Transportation Improvement Program Amendment II
- Census Bureau data

Task 4 – 2045 Transportation System Needs Assessment and Project List Update

The consultant shall conduct a future year (2045) transportation system needs assessment, utilizing the existing conditions analysis, current project lists and prioritization, and future growth scenarios in the City of Billings and Lockwood Growth Policies.

The needs assessment will be used to inform the update and development of a revised set of projects, building off the project lists included in the 2018 LRTP and identifying new priorities.

In addition to the future needs assessment and proposed project lists necessary to address those needs, the MPO desires to more explicitly address the role emerging technologies can and should take in achieving our plan goals. Technology examples include communications technology and intelligent transportation systems (ITS). The consultant should be prepared to develop research, recommendations, and gather community priorities for emerging technology.

Required analysis:

- The consultant will work with the MPO and MDT to identify the most efficient use of resources to move people and goods in and through the Metropolitan Planning Area. Use of the existing conditions and deficiencies analysis shall inform the future needs assessment, and preferred outcomes of the project list update shall reinforce and support performance measures.
- Evaluation and update of project descriptions, recommended improvements, and cost estimates to accurately reflect deficiencies, needs assessment, and performance measures.
- Evaluation and recommendations on how emerging technologies will support Billings future transportation system and recommended actions necessary to support or manage these systems.

Task 5 – Financial Plan

Federal regulations regarding the development of long-range transportation plans require that a financial plan that demonstrates how the adopted transportation plan can be implemented is provided and that the recommended project list be fiscally-constrained.

Required Analysis:

- Early in the process, the consultant should work with the MPO and MDT staff to identify projected funding resources (throughout the lifetime of the plan), including both public and private sources (federal, state, and local) and by mode as necessary. This task will likely require coordination with other entities.
- The consultant should analyze public input data collected throughout the planning process to develop potential funding priorities.

Task 6 – Plan Implementation Recommendations

The 2018 LRTP required extensive updates to the Safety and Security chapters and the development of Performance Measure. The 2023 LRTP update should continue to include up-to-date information and requirements and update/identify community goals and implementation, including roles and responsibilities of related agencies such as the MDT, City and County.

Required analysis:

- Clear graphics and a summary of goals established in the 2018 LRTP.
- Evaluation of current funding and design priorities, and development of recommended priorities to implement plan goals.

Identification of additional policies or procedures that can help achieve more diverse modes of transportation.

Task 7 – Prepare Draft 2023 Long Range Transportation Plan

The draft phase of the LRTP will include a review and adoption process and will require the consultant to attend various local government review and action meetings. These meetings can be in-person or via Zoom or related platform. These meetings will provide an opportunity for the consultant to present an overview of the LRTP, answer questions and provide guidance on the contents of the plan. The required meetings include: Technical Advisory Committee (TAC); Yellowstone County Board of Planning (Planning Board), this meeting will include a public hearing; Billings City Council (City); Yellowstone Board of County Commissioners (BOCC); and, the final meeting of the adoption process, Policy Coordinating Committee (PCC).

Required analysis:

- The consultant shall work with the MPO to gather all information collected during previous tasks, including technical resources and public input, to develop a Draft 2023 Long-Range Transportation Plan, which includes a project list that is financially constrained and meets all federal requirements.
- Throughout the review and adoption phase, the consultant shall edit and amend any portion of the LRTP deemed needed for the successful adoption of the plan.

Task 8 – Prepare Final 2023 Long Range Transportation Plan

After final adoption by the PCC, the consultant shall deliver to the MPO:

- 2023 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

COST

Task/Sub-Task	Kittelson & Associates, Inc.										DOWL			Total Hours	Total Cost
	Project Manager Andy Daleiden	Project Principal Wende Wilber	Senior Advisor Nick Foster	Modeler Mike Aronson	Modeling Support	Analyst Mark Heisinger	Analyst Rachel Grosso	GIS Analyst Steve Rhyne	Graphics Katie Ayer	Design Support Doug Enderson	Safety Support Sarah Patterson	PI Manager Lisa Olmsted			
Task 1: Project Management	18	1	0	0	0	26	3	0	0	20	0	14	82	\$15,032	
Develop Work Plan & Final Schedule	4	1	-	-	-	2	3	-	-	4	-	6	20	\$3,575	
Monthly Progress Reports & Invoice	4	-	-	-	-	4	-	-	-	8	-	8	24	\$4,402	
Weekly Email Updates	4	-	-	-	-	16	-	-	-	-	-	-	20	\$3,183	
Subconsultant Coordination	6	-	-	-	-	4	-	-	-	8	-	-	18	\$3,873	
Task 2: Project Visioning & Public Involvement	77	0.5	0.5	8	0	80	56	0	20	84	14	130	470	\$79,640	
Project Branding	1	-	-	-	-	2	2	-	16	1	-	1	23	\$2,718	
Develop Public Involvement Plan	2	-	-	-	-	-	-	-	-	2	-	8	12	\$2,001	
Project Visioning	4	0.5	0.5	-	-	8	8	-	-	2	-	2	25	\$4,044	
Steering Committee Meetings	40	-	-	8	-	38	38	-	-	30	4	24	182	\$32,610	
Public Outreach Meetings	18	-	-	-	-	18	-	-	4	10	-	45	95	\$15,524	
Elected Officials Workshop	10	-	-	-	-	10	4	-	-	3	-	-	27	\$5,085	
Project Website & Engagement Platform	1	-	-	-	-	2	2	-	-	4	10	10	29	\$4,479	
Survey/Stakeholder Outreach	1	-	-	-	-	2	2	-	-	32	-	40	77	\$13,179	
Task 3: Existing Conditions & Deficiency Review	16	2	2	0	0	80	80	12	8	4	40	0	244	\$35,620	
Multimodal, Equity, Emerging Technologies Review and Analysis	4	-	-	-	-	20	20	8	-	-	-	-	52	\$7,610	
Traffic & Safety Analysis	4	1	1	-	-	40	40	-	-	4	40	-	130	\$18,825	
Draft Existing Conditions Chapter	8	1	1	-	-	20	20	4	8	-	-	-	62	\$9,186	
Task 4: Travel Demand Model	4	0	0	32	80	24	24	0	0	0	0	0	164	\$28,041	
Base Year Model	2	-	-	16	40	8	8	-	-	-	-	-	74	\$12,974	
Year 2045 Model	2	-	-	16	40	16	16	-	-	-	-	-	90	\$15,067	
Task 5: Future Needs Assessment & Project List	24	4	3	12	24	106	106	20	16	12	12	0	339	\$51,696	
Transportation Network Scenarios	4	-	-	12	24	4	4	-	-	-	-	-	48	\$8,886	
Multimodal, Equity, Emerging Technologies Review and Analysis	4	-	-	-	-	20	20	-	-	-	-	-	44	\$6,253	
Traffic & Safety Analysis	4	1	1	-	-	32	32	-	-	4	4	-	78	\$11,332	
Project Prioritization Process	4	1	-	-	-	10	10	4	-	4	4	-	37	\$6,040	
Draft Project List/Cost Estimates	4	1	1	-	-	20	20	8	-	4	4	-	62	\$9,550	
Future Conditions Chapter	4	1	1	-	-	20	20	8	16	-	-	-	70	\$9,635	
Task 6: Financial Plan	4	0	0	0	0	20	20	4	0	0	0	0	48	\$6,931	
Task 7: Billings 2023 LRTP Report	24	5	4	0	0	54	54	8	36	8	0	8	201	\$30,002	
Task 8: Plan Adoption	20	0	0	0	0	11	3	0	0	0	0	0	34	\$6,973	
TOTAL LABOR COST	187	12.5	9.5	52	104	401	346	44	80	128	66	152	1,582	\$253,936	

*Reimbursables include costs for print materials, media promotion, public outreach, and travel for four Steering Committee meetings and plan adoption meetings.

Total Reimbursables: \$15,865*
Total Project Budget: \$269,801



EXHIBIT C CERTIFICATE OF LIABILITY INSURANCE

Client#: 763494 KITTEASC

ACORD **CERTIFICATE OF LIABILITY INSURANCE** DATE (MM/DD/YYYY)
3/24/2022

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 have ADDITIONAL INSURED provisions or 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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Insurance Services NW PR 601 Union Street, Suite 1000 Seattle, WA 98101	CONTACT NAME: Please See Below: PHONE (A.C. No. Ext.): 206 441-6300 FAX (A.C. No.): 610-362-8530 E-MAIL ADDRESS: Seattle.PL.CertRequest@usi.com														
INSURED Kittelson & Associates, Inc. 851 SW 6th Avenue, Suite 600 Portland, OR 97204	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Hanover Insurance Company</td> <td>22292</td> </tr> <tr> <td>INSURER B : Allmerica Financial Benefit Ins. Co.</td> <td>41840</td> </tr> <tr> <td>INSURER C : XL Specialty Insurance Company</td> <td>37885</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Hanover Insurance Company	22292	INSURER B : Allmerica Financial Benefit Ins. Co.	41840	INSURER C : XL Specialty Insurance Company	37885	INSURER D :		INSURER E :		INSURER F :	
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INSURER E :															
INSURER F :															

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	ADDL INSR	SUBR WVG	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 <input checked="" type="checkbox"/> Stop Gap GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO. JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	X	X	ZD2D78128003	01/01/2022	01/01/2023	EACH OCCURRENCE: \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence): \$100,000 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 Stop Gap/EL: \$1,000,000 COMBINED SINGLE LIMIT (Ea occurrence): \$1,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	AW2D78128704	01/01/2022	01/01/2023	BODILY INJURY (Per person): \$ BODILY INJURY (Per accident): \$ PROPERTY DAMAGE (Per accident): \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$0	X	X	UH2D78128103 (Follow Form)	01/01/2022	01/01/2023	EACH OCCURRENCE: \$5,000,000 AGGREGATE: \$5,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		X	WM2D78128903	01/01/2022	01/01/2023	<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
C	Professional Liability Incl. Pollution		X	DPR9987381	01/01/2022	01/01/2023	\$5,000,000 per claim \$5,000,000 annl aggr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
****Please Note:** The limits shown above may not represent the full limits of coverage carried by the Named Insured, but are shown as evidence that coverage is carried with limits at least as high as is required by contract.**

RE: KA1 PN 27514-Billings Urban Area LRTP - 2022 Update.
 (See Attached Descriptions)

CERTIFICATE HOLDER City of Billings PO Box 1178 Billings, MT 59103	CANCELLATION 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
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