



CONSULTANT AGREEMENT

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 21st Street Underpass Safety, Roadway, and Multi-Modal Access Improvement Study 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 nine (9) 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 \$150,000.00.

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 John Ringert and the Project Manager for the **CITY** designated is Lora Mattox.

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

JOHN RINGERT

PRINT NAME

APPROVED AS TO FORM:

SENIOR PRINCIPAL ENGINEER

PRINT TITLE

CITY ATTORNEY'S OFFICE

ATTEST:

DENISE BOHLMAN, CITY CLERK

EXHIBIT A SCOPE OF WORK

Project Tasks

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

- Bi-weekly project management reports to the City/County Planning Division.
- Copies of any public announcements and community meeting sign-in sheets (or similar)
- Steering Committee Meetings' minutes (or similar)

1. Project Initiation and Planning:

- Conduct an in-person kickoff meeting with stakeholders, including representatives from Montana Department of Transportation, City of Billings, and BNSF Railroad, and others deemed vital (In-person trip #1). This may be combined with, or serve as, the first Steering Committee meeting.
- Develop a project process outlining the project's scope, objectives, deliverables, and timeline.
- Conduct an initial review of existing documentation, plans, and safety records related to the underpass.

Deliverables:

- *Project updates via bi-weekly reports or update meetings.*
- *Attend an in-person project kick-off meeting with City and key stakeholders. This meeting may also serve as the first Steering Committee meeting.*
- *Summary of the scope, objectives, deliverables, and schedule.*

2. Data Collection and Analysis:

- Obtain as-built plans from the City, MDT, and/or BNSF Railroad for the following:
 - A. 21st Street (south of Minnesota Street to north of Montana Street)

- B. Montana Street (in vicinity of 21st Street)
- C. Minnesota Avenue (in vicinity of 21st street)
- D. Railroad overpass
- Conduct a field review of the underpass, analyzing current safety conditions, signage, lighting, and visibility. This will include:
 - A. Traffic Analysis: Evaluate traffic flow and patterns including:
 - Collect up to four new traffic counts during the weekday AM and PM peak hour periods at intersections on 21st Street and 27th Street.
 - Evaluate the existing AM and PM peak hour level of service at the study in intersections on 21st Street and 27th Street at Minnesota St and Montana Street.
 - Estimate 2045 peak hour traffic conditions utilizing traffic projection information provided by the City through their regional travel demand model and evaluate the 2045 peak hour levels of service at the study intersections.
 - Conduct 24-hour traffic counts on 21st Street and 27th Street, including truck counts, and evaluate use of the crossings by types of vehicles. To the extent possible, estimate the amount of traffic flow shift to 21st Street that occurs during a train crossing.
 - B. Safety: Evaluation:
 - 1. Obtain crash data from MDT for the past five years and identify crash characteristics on 21st Street in the vicinity of the overpass.
 - 2. Review roadway lighting and other geometric elements of the roadway that can affect safety.
 - 3. Evaluate the existing level of stress for pedestrians and bicycles and compare to the Pedestrian and Bicycle Master Plan.
 - C. Structure Evaluation: Evaluate current bridge conditions from existing information. This will include an evaluation of construction impacts associated with structure improvements.

- D. Drainage & Hydraulics: Review available plans, as-builts, and geotechnical information, available through the City or other stakeholders.

Deliverables:

- *Existing conditions technical memorandum (draft and final).*

3. Stakeholder Engagement:

- Establish regular communication channels with BNSF Railroad to understand their operational requirements and constraints.
- Conduct public outreach and community engagement activities to gather input on safety concerns and improvement priorities. This will include:
 - A. Preparation of a public engagement plan summary at the start of the project.
 - B. Media Relations: Consultant will coordinate with the City to utilize the City social media for public announcements.
 - C. Prepare a web site for use in public outreach. City will provide link on City web page.
 - D. Prepare and manage a stakeholder contact and comment database.
 - E. Attendance at three (3) Steering Committee meetings which may be in-person or virtual depending on dates. The City will identify committee members and provide the opportunity for comment by the consultant team. The meetings are assumed to be the following:
 1. Introduction: In-person meeting assumed to be the same day or part of the project kick-off meeting in Billings (See Task 1). A virtual meeting is assumed if a separate meeting is required that is not on the same day as the kick-off meeting.
 2. Findings & Draft Strategies: In person meeting (in-person trip #2).
 3. Draft plan recommendations: Virtual meeting
 - F. Stakeholder meetings: Stakeholder meetings: Attend up to five (5) stakeholder meetings. Meetings are assumed to occur while project team is already in Billings for other project meetings or to be virtual.

The meetings are assumed to be at different junctures of the project depending on the stakeholder.

G. Phase 1 Community Outreach:

1. Prepare a web page with a description of project and survey focused on existing conditions and needs. All announcements will be through the City social media.

H. Phase 2 Community Outreach:

1. Web-based open house with summary of findings and alternatives. A survey will also be conducted focused on the alternatives. All announcements will be through the City social media.
- o Engage with local law enforcement and emergency services for insights into safety issues.
 - A. Obtain contact information from the City and make contact with emergency service providers that serve downtown Billings.

Deliverables:

- *Engagement plan.*
- *Meeting notes from up to three (3) Steering Committee meetings.*
- *Meeting notes from up to five (5) stakeholder meetings*
- *Phase 1 stakeholder/public survey and summary.*
- *Phase 2 community/stakeholder web-based open house, survey, and summary.*

4. Safety Improvement Strategies:

- o Develop safety improvement strategies for the underpass based on data analysis and stakeholder input.
- o Propose roadway design solutions to enhance safety, including improved lighting, signage, and non-motorized access.
- o Identify alternatives for railroad structure improvements.
- o Consider advanced technologies for real-time monitoring of underpass conditions.

Deliverables:

- *Summary list of potential safety improvement strategies along with a findings related to feasibility and constraints.*

5. Multi-Modal Accessibility:

- Evaluate the underpass' accessibility for options to improve both motorized and non-motorized users.
 - A. Evaluate the level of traffic stress for pedestrians and bicycles.
 - B. Identify elements not meeting ADA requirements.
- Propose improvements to accommodate pedestrians, cyclists, and other non-motorized transportation modes.
- Consider enhancements such as widened pathways, bike lanes, and ADA-compliant features.

Deliverables:

- *Summary list of potential multi-modal improvement strategies along with a findings related to feasibility and constraints.*

6. Roadway Improvements:

- Assess the condition of the roadway leading to and from the underpass based on the existing conditions analysis.
- Obtain roadway pavement conditions and anticipated rehabilitation needs information from the City. No pavement borings, geotechnical investigations, pavement analysis are assumed.
- Obtain water table and other geotechnical information from existing data available to the team or provided by the City and evaluate drainage options. No borings or other geotechnical investigations are assumed. No hydrologic or hydraulic analysis will be completed for the study. A drainage report will not be developed for the study.
- Propose roadway improvements, including pavement rehabilitation, intersection upgrades, and traffic flow optimization. Proposed improvements will consider transportation plans and future transportation projects to ensure compatibility with existing and future transportation plans.

- Develop a conceptual design layout of the proposed improvements based on the outcome of the analysis.
- Summarize the results Tasks 4, 5 and 6 in a strategies memorandum.

Deliverables:

A. Improvement strategies memorandum (draft and final)

B. Concept design figure identifying preliminary recommendations for improvements.

7. Coordinated Planning with Railroads:

- Collaborate closely with BNSF Railroad to understand their scheduling, operational needs, and safety requirements during train usage.
- Schedule and attend periodic update meetings with BNSF Railroad.
- Identify necessary permissions and approvals for proposed improvements.

Deliverables:

A. Meeting summaries from meetings with BNSF

8. Planning Level Financial Planning:

- Coordinate with the City to determine how to utilize \$7,400 of total project funds designated by the MPO for Safe and Accessible Transportation Options Planning Activities. If necessary, track the work associated with these funds in a separate task.
- Develop a planning level budget for the project, including cost estimates for safety, multi-modal, and roadway improvements.
- Explore additional funding sources and grant opportunities based on information provided by the City and experience on other projects.

9. Regulatory Compliance and Permitting:

- Assess the regulatory compliance and permitting needs in order to comply with local, state, and federal regulations. This will include considerations for the design elements, drainage approach, right-of-way needs, property ownerships, and anticipated funding sources. No environmental field work or environmental evaluation is included.

10. Draft Study:

- Develop final report that includes a phased implementation plan based on prioritized improvements and coordination with railroad schedules.
- Establish timelines for each phase of implementation.
- A draft of the report will be submitted to the City for review. The City will utilize a preliminary study review phase, during which the steering committee and other stakeholders will provide feedback and suggestions for corrections.

Deliverables:

A. Draft report

11. Final Draft Study/Review Schedule:

- Prepare a final report, incorporating comments on the draft report.
- The consultant will support the City in the Transportation Planning Process, which involves reviewing and approving documents. This schedule encompasses up to five project presentations to various entities such as the Technical Advisory Committee (TAC), Planning Board, City Council (work session), Board of County Commissioners, and the Policy Coordinating Committee (PCC). The following presentations are assumed:
 - A. Planning Board & TAC: Virtual presentation
 - B. City Council Work Session: In person presentation (In-person trip #3)
 - C. Board of County Commissioners: Virtual presentation
 - D. City Council Virtual: Virtual presentation

Deliverables

- *Final report with electronic version of the Plan that may be posted to websites, and easily sent to stakeholders.*
 - *Electronic version of the Executive Summary as a standalone document*
 - *Up to 10 printed copies of the plan and digital copy with native files.*
- *Draft presentations and final presentations*

EXHIBIT B PROJECT COST

PROJECT TASK	TOTAL
<i>1) Project Initiation & Planning</i>	\$8,100
<i>2) Data Collection & Analysis</i>	\$16,800
<i>3) Stakeholder Engagement</i>	\$29,000
<i>4) Safety Improvement Strategies</i>	\$6,400
<i>5) Multi-modal Accessibility</i>	\$6,500
<i>6) Roadway Improvements</i>	\$6,500
<i>7) Coordination with Railroads</i>	\$9,600
<i>8) Planning Level Financial Planning</i>	\$7,800
<i>9) Regulatory Compliance</i>	\$4,000
<i>10) Draft Study</i>	\$43,600
<i>11) Final Study/Review Schedule</i>	\$11,700

Total: \$ 150,000

Kittelson & Associates Billing Rates



City of Billings
Rate Schedule
As of November 2024

Classification	Hourly Rate	Overhead @ 205.03%	Profit @ 12%	Hourly Billing Rate*
Senior Principal Engineer/Planner	\$86.52	\$177.39	\$31.67	\$295.58
<i>Brehmer, Christopher</i>	<i>\$88.49</i>	<i>\$181.43</i>	<i>\$32.39</i>	<i>\$302.31</i>
<i>Daleiden, Andrew</i>	<i>\$83.66</i>	<i>\$171.53</i>	<i>\$30.62</i>	<i>\$285.81</i>
<i>Ringert, John</i>	<i>\$86.06</i>	<i>\$176.45</i>	<i>\$31.50</i>	<i>\$294.01</i>
Principal Engineer/Planner	\$74.94	\$153.66	\$27.43	\$256.03
Associate Engineer/Planner	\$66.11	\$135.55	\$24.20	\$225.86
Senior Engineer/Planner	\$54.09	\$110.90	\$19.80	\$184.78
Engineer/Planner	\$43.68	\$89.56	\$15.99	\$149.22
Transportation Analyst	\$37.93	\$77.78	\$13.89	\$129.60
Technician I	\$31.58	\$64.74	\$11.56	\$107.88
Technician II	\$36.63	\$75.11	\$13.41	\$125.15
Senior Technician	\$43.82	\$89.85	\$16.04	\$149.71
Associate Technician	\$53.94	\$110.59	\$19.74	\$184.27
Office Support	\$32.25	\$66.12	\$11.80	\$110.18
Data Analyst / Software Technician	\$48.96	\$100.38	\$17.92	\$167.26
Senior Data Scientist/Developer	\$65.01	\$133.29	\$23.80	\$222.10

**Average classification rates are shown above along with actual rates for key personnel. The above rates are for budgeting purposes only and additional staff may be billed at the time services are performed.*

