



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 **APPLIED RESEARCH ASSOCIATES, INC.**, of 4300 San Mateo Blvd. NE, Suite A-220, Albuquerque, NM 87110, hereinafter referred to as "**CONSULTANT**."

WITNESSETH:

WHEREAS, the **CITY** proposes to perform pavement condition survey and assessment 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 1 year, from the execution of this **AGREEMENT**. This **AGREEMENT** may be extended for up to 2 three month options 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 \$148,400.00.

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. All invoices shall be sent to: City Project Manager, Ken Ard, P.E., ardk@billingsmt.gov

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.

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.

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. Name a Project Manager who shall be the liaison between the **CONSULTANT** and the **CITY**. For this project, the Project Manager for **CONSULTANT** designated is Phillip Donovan, PE and the Project Manager for the **CITY** designated is Ken Ard, PE.
- C. Name a Contracts Representative who shall be the liaison between the **CONSULTANT** and the **CITY** for contractual matters. For this project, the Contracts Representative for **CONSULTANT** is Gregory Starks, Sr. Contract Administrator, and the Contract Representative for the **CITY** is Ken Ard, PE.

10. **NONDISCRIMINATION:**

- A. **CONSULTANT** shall, in performance of work under this **AGREEMENT**, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973.

CONSULTANT is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by **CONSULTANT** subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016. **CONSULTANT** agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this **AGREEMENT**.

- B. The **CONSULTANT** shall state, in all solicitations or advertisements for employees to work on jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.

The **CONSULTANT** and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

The **CONSULTANT** and any **SUBCONSULTANT** shall abide by the requirements of 41 CFR 60-1.4, which states employees or applicants may not be discharged or in any other manner discriminated against because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who

have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the **CONSULTANT'S** legal duty to furnish information.

- C. The **CONSULTANT** shall comply with any and all reporting requirements that may apply to it that the **CITY** may establish by regulation.
 - D. The **CONSULTANT** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
 - E. The **CONSULTANT** shall include the provisions of Subsections A through D of this Section in every subcontract or purchase order under this **AGREEMENT**, so as to be binding upon every such subcontractor or vendor of the **CONSULTANT** under this **AGREEMENT**.
 - F. The **CONSULTANT** agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
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. **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.

If either party fails to comply with any condition of this AGREEMENT at the time or in the manner provided for, the other party may, at its option, terminate this AGREEMENT and be released from all obligations if the default is not cured within ten (10) calendar days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this AGREEMENT.

14. **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.
15. **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.
16. **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.
17. **LEGAL RELATIONS:** The **CONSULTANT** shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done.
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. **OWNERSHIP OF DOCUMENTS:** All information relating to the project and prepared under the terms of this **AGREEMENT**, including reports, data, recommendations, exhibits, analyses, and plans shall be deemed

the property of the **CITY**. Reproducibles of all notes, reports, and plans shall be made available at the **CITY'S** request.

20. **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.
21. **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**.
22. **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.
23. **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.
24. **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.
25. **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

**APPLIED RESEARCH TECNOLOGIES
INC.**
(PRINT BUSINESS NAME ABOVE)

**WILLIAM A. COLE,
CITY MAYOR**

SIGNATURE

Rachel Cavallaro
PRINT NAME

APPROVED AS TO FORM:

ARA Contracts Manager
PRINT TITLE

CITY ATTORNEY'S OFFICE

ATTEST:

DENISE BOHLMAN, CITY CLERK



EXHIBIT A

Scope of Work for ARA to Complete the PCI Survey for Billings, Montana

Project Title: W.O. 25-09 City Pavement Condition Survey and Assessment

Pavement Management System (PMS)

The objective of this project is to assess the condition of the 569 centerline miles of City-owned roadways within Billings' roadway network using the ASTM D6433 Pavement Condition Index (PCI) inspection process. The result will be a Pavement Management System (PMS) report that provides a detailed analysis of current pavement conditions, along with both annual and five-year cost estimates for required maintenance at various service levels. The Consultant will deliver a comprehensive report in accordance with the City's requirements.

The following outlines the scope of work for the consultant's services.

Scope of Work

Task 1. Initial Consultation and Data Review

- A. Kick-off Meeting: Consultant will conduct a virtual meeting with City staff to review project parameters.
- B. Data Provision: City will provide available records, field data, maps, the latest PMS report, and electronic copies of the PMS database files.

Deliverables:

- 1. Virtual kick-off meeting with City staff to discuss project parameters.
- 2. Meeting agendas, minutes, and a detailed project schedule.
- 3. Monthly progress reports.
- 4. Virtual project closeout meeting.

Task 2. PMS Audit, Pavement History, & Quality Assurance

- A. The Consultant will verify the accuracy and reliability of existing road inventory and condition data (PCI) and identify discrepancies or outdated information.
- B. Review Maintenance & Rehabilitation: Consultant will review past maintenance and rehabilitation work since the last PMS update.



- C. Database Updates: Consultant will update the City's database to reflect any newly rehabilitated street segments.
- D. The Consultant will make recommendations to improve the City's pavement management and improve efficiency.

Deliverables:

- 1. Updated Microsoft Excel file containing the City's pavement history.
- 2. Updated PAVER database.
- 3. Technical memorandum with recommendations to improve pavement management program and improve efficiency.

Task 3. Pavement Condition Survey and Data Analysis

The Consultant will conduct a comprehensive pavement condition survey across the City's road network, collecting data on pavement distresses as per ASTM D6433 standards. This includes using an automated vehicle to capture data on rutting, surface distresses, and roughness.

- A. Data Collection: Data collection is to be performed utilizing an automated van or other vehicle designed to collect pavement distress data. Typical equipment includes: computerized work station, cameras to take digital images of the street surface, and lasers to capture rutting, surface distress and roadway roughness. The scope of work shall be inclusive but not limited to the following:
 - 1. Perform automated inspection of the entire pavement network.
 - 2. Identify distresses according to ASTM D6433.
- B. Data Processing: The pavement distress information is to be analyzed to determine type, quantity and severity.
 - 1. Update and if necessary, enhance City's existing database (or more recent version as directed by the city) including confirming/updating pavement distress types, historical information and street classifications.
 - 2. Import distress data into MicroPAVER.
- C. The governing document in performing condition surveys shall be ASTM D6433 "Standard Practice for Roads and Parking Lots Pavement Condition Index Surveys." Both asphalt concrete (AC) and Portland Cement Concrete (PCC) pavements are to be included in this protocol. Equipment to be used shall have a high degree of repeatability and been used for this kind of project.

- D. The Consultant's database shall have an inventory of all pavement sections that include the computed Pavement Condition Index (PCI) of all city roads.
- E. Work with the City to develop and define a decision tree to decide the appropriate condition for a treatment application

Deliverables:

1. MS Excel spreadsheet and PAVER database including the data collected for each street section surveyed.
2. Pavement Survey Condition GIS Shape Files.

Task 4. Budgetary Analysis and Funding Scenarios

- A. The PMS report will include a budgetary analysis with four funding scenarios, which will be decided during the kick-off meeting:

Scenario 1: No funding.

Scenario 2: Maintain the current funding levels.

Scenario 3: Maintain a PCI.

Scenario 4: Funding to clear deferred maintenance in 10 years.

- B. The consultant will analyze these scenarios and make recommendations based on available data and budget constraints.

Deliverables:

1. Draft PMS database output reviewed with City staff to determine appropriate funding levels.
2. Budget analysis and recommendations in the PMS report.

Task 5. Pavement Management System Report

- A. The Consultant will prepare a comprehensive PMS report that includes an executive summary, findings, recommendations, and future projections.

- B. Content of Report:

1. Executive Summary
2. Pavement condition summary and proposed maintenance strategies.
3. Five-year Capital Improvement Program with estimated costs.
4. Recommended rehabilitation strategies that are innovative, practical, sustainable, and workable within our area.
5. Tables and Maps: Construction history, PCI and IRI values, major and minor maintenance priorities for all streets.



6. Color-coded maps for PCI, minor maintenance strategies, and budget year strategy.

Deliverables:

1. PDF version of the draft PMS report, including digital maps suitable for large-format printing.
2. Final PMS report with executive summary, pavement condition analysis, future rehabilitation projections, and implementation recommendations.
3. PDF and/or Excel tables and maps, including prioritized maintenance strategies.

Schedule: Final completion will be no later than September 15, 2025.

Task	Planned Start	Planned Finish
Task 1: Project Management and Coordination	2/24/2025	9/15/2025
Kickoff Meeting	2/27/2025	2/28/2025
Define Data Needs and Quality Control Plan	2/27/2025	3/13/2025
Task 2: Pavement Management Program Update	3/1/2025	7/27/2025
Inventory Review	2/27/2025	3/1/2025
Data Collection	5/5/2025	5/26/2025
Distress Rating	5/10/2025	6/19/2025
Determine Pavement Condition Index	6/14/2025	7/4/2025
Upload Distress Data to PAVER	6/29/2025	7/6/2025
Task 3: Draft Report and Presentation	7/6/2025	7/27/2025
Draft Report	7/6/2025	7/27/2025
Staff Presentation	7/16/2025	7/30/2025
Task 4: Final PCI Report	7/30/2025	9/8/2025
Task 5: PMS Audit	6/30/2025	9/14/2025
QA/QC	2/24/2025	9/14/2025

City of Billings Pavement Management System

