

Request for Proposals

For

21st Street Underpass Safety, Roadway, and Multi-Modal Improvement Study

**REQUEST FOR PROPOSALS
TABLE OF CONTENTS**

SECTION 1: GENERAL INFORMATION

SECTION 2: RULES GOVERNING COMPETITION

SECTION 3: INFORMATION FOR SUPPLIERS

SECTION 4: RFP EVALUATION AND PROCESS

SECTION 5: SCOPE OF WORK

SECTION 6: CONTRACT NEGOTIATION PROCESS

ATTACHMENT A: STANDARD TERMS AND CONDITIONS

ATTACHMENT B: CONDITIONS AND NON-COLLUSION FORM

ATTACHMENT C: MASTER Q & A FORM

ATTACHMENT D: DBE GOALS AND NON-DISCRIMINATION NOTICE

SECTION 1: GENERAL INFORMATION

1.1 Request For Proposals (RFP) – 21st Street Underpass Safety, Roadway, and Multi-Modal Access Improvement Study – LM05102024

THE ABOVE DESCRIPTION MUST APPEAR ON ALL PROPOSALS AND RELATED CORRESPONDENCE.

THIS IS NOT AN ORDER.

<p>PROPOSALS MUST BE RECEIVED NO LATER THAN: May 10, 2024, at 5:00 pm (MST)</p>	<p>RFP INITIATIVE: 21st Street Underpass Safety, Roadway, and Multi-Modal Access Improvement Study – LM05102024</p>
<ul style="list-style-type: none"> • All proposals should be submitted <u>electronically</u> via email to mattoxl@billingsmt.gov • All suppliers must respond in detail to each element of this RFP in order to be considered for a contract award. • Total project budget is \$100,000. 	
<p>SEND ALL CORRESPONDENCE TO THE CONTACT BELOW:</p>	
<p>City of Billings ATTN: Lora Mattox 2825 3rd Ave. N, 4th Floor Billings, MT 59101</p>	<p>Or</p> <p>Lora Mattox, Transportation Planning Coordinator Email: mattoxl@billingsmt.gov PHONE: (406) 247-8622</p>

1.2 Purpose

This RFP is issued by City of Billings (City) for the purpose of obtaining information and pricing regarding the development of a 21st Street Underpass Safety, Roadway, and Multi-Modal Access Improvement Study. It is the intent of the City to review and assess the RFP responses to determine which proposal best meets the needs of the City.

Suppliers are expected to provide their best and most competitive proposal.

1.3 General Submission Information

The City intends to award a single contract for these consulting services. The proposal should address the Consultant's capabilities for performing all aspects of the project development process while presenting specific project information and substantiating the Consultant's methodologies and approach for completing the work requested.

1.4 Preparation Costs

The City shall not be responsible for proposal preparation costs, nor for costs including attorney fees associated with any (administrative, judicial or otherwise) challenge to the determination of the highest-ranked Proposer and/or award of contract and/or rejection of proposal. By submitting a proposal each Proposer agrees to be bound in this respect and waives all claims to such costs and fees.

SECTION 2 – RULES GOVERNING COMPETITION

2.1 Examination of Proposals

Proposers should carefully examine the entire RFP, any addenda thereto, and all related materials and data referenced in the RFP. Proposers should become fully aware of the nature of the Work and the conditions likely to be encountered in performing the Work.

2.2 Proposal Acceptance Period

Award of this proposal is anticipated to be announced within **forty-five (45) calendar days**, although all offers must be completed and irrevocable for **ninety (90) days** following the submission date.

2.3 Confidentiality

The content of all proposals will be kept confidential until the selection of the Contractor is publicly announced. At that time the selected proposal is open for review. After the award of the Contract, all proposals will then become public information.

2.4 Proposal Format

Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of the Proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be placed on:

- Conformance to the RFP instructions
- Responsiveness to the RFP requirements
- Overall completeness and clarity of content

2.5 Signature Requirements

All proposals must be signed, either with a wet signature or an electronic signature. An officer or other agent of a corporate vendor, if authorized to sign Contracts on its behalf; a member of a partnership; the owner of a privately-owned vendor; or other agent if properly authorized by a Power of Attorney or equivalent document may sign a proposal. The name and title of the individual(s) signing the proposal must be clearly shown immediately below the signature.

2.6 Proposal Submission

The proposal must be received by the City prior to May 10, 2024, by 5:00 p.m. MST. Proposals should be submitted electronically as directed in Section 1. Proposals shall not exceed more than 10 pages total, does not include the signed Conditions and Non- Collusion form. Additionally, proposals can include a 1-page cover letter and 1-page proposed project budget. Proposals shall be delivered, mailed, or emailed to:

Billings MPO
Attention: Lora Mattox, Transportation Planning Coordinator
Department: Planning & Community Services Department
Address: 2825 3rd Avenue North, 4th Floor, Billings, MT 59101
Phone number: 406-247-8622
Email: mattoxl@billingsmt.gov

2.7 News Releases

News releases pertaining to the award resulting from the RFPs shall not be made without prior written approval of the City of Billings or the Billings MPO.

2.8 Disposition of Proposals

All materials submitted in response to this RFP become 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.

Information provided in response to this RFP will be held in confidence and will not be revealed or discussed with competitors prior to award of Contract by Council. However, one copy of each proposal submitted shall be retained for the official files of the Department and will become public record after award of the Contract. Fee or Price schedules submitted, but not reviewed by the City, do not become a public record and shall only be retained for official files.

Records and materials that are constitutionally protected from disclosure are not subject to the provisions of this section.

The Consultant understands that, if selected, the City reserves the right to provide its opinion publicly and privately regarding the Consultant's performance.

2.9 Modification/Withdrawal of Proposals

A respondent may withdraw a proposal at any time prior to the final submission date by sending written notification of its withdrawal, signed by an agent authorized to represent the agency. The respondent may thereafter submit a new or modified proposal prior to the final submission date. Modifications offered in any other manner, oral or written, will not be considered. A final

proposal cannot be changed or withdrawn after the time designated for receipt, except for modifications requested by the City after the date of receipt and following oral presentations.

2.10 Oral Change/Interpretation

No oral change or interpretation of any provision contained in this RFP is valid whether issued at a pre-proposal conference or otherwise. Written addenda will be issued when changes, clarifications, or amendments to proposal documents are deemed necessary by the Municipality.

2.11 Late Submissions

PROPOSALS NOT RECEIVED BY THE DATE AND TIME SPECIFIED IN THE COVER LETTER WILL NOT BE CONSIDERED AND WILL BE RETURNED UNOPENED AFTER RECOMMENDATION OF AWARD.

2.12 Rejection of Proposals

The City of Billings reserves the right to reject any or all proposals if determined to be in the best interest of the City.

Section 3: Information for Suppliers

3.1 Disclaimer

This RFP does not form or constitute a contractual document. The City shall not be liable for any loss, expense, damage or claim arising out of the advice given or not given or statements made or omitted to be made in connection with this RFP. The City also will not be responsible for any expenses which may be incurred in the preparation of this RFP. This RFP is not to be construed as a contract or commitment of any kind.

3.2 Examination of Documents

Before submitting the proposals, the proposer shall:

- (a) Carefully examine the Standards and Specifications as well as all other attached documents;
- (b) Fully inform yourself of the existing conditions and limitations;
- (c) Include with the proposal sufficient information to cover all items required in the specifications.

3.3 Proposal Modifications

In addition to any other information and documentation requested in this RFP, any forms provided herein shall be included in the submitted proposal. Modifications, additions or

changes to the terms and conditions of this request for proposals may be cause for rejection of the proposal. Proposals submitted without required forms may be rejected.

3.4 Withdrawal of Proposals

Proposers may withdraw their proposal by written request at any time prior to the due date set for receiving proposals.

3.5 Prices Honored

By responding to this RFP, Proposer acknowledges that no contractual relationship with the Proposer exists until execution of the resulting contract following City Administration or City Council approval. Because contract approval can be delayed due to scheduling or unforeseen circumstances, the Proposer must honor their pricing and any other terms set forth in the proposal for at least ninety (90) days after the RFP due date.

The prices established from this RFP may be extended to other political subdivisions within the State of Montana solely at the vendor's discretion.

3.6 Certification

The proposer certifies that the proposal has been arrived at independently and has been submitted without any collusion designed to limit competition. The proposer further certifies that the materials, products, services and/or goods offered herein meet all requirements of the stated specifications and are equal in quality, value and performance with highest quality, nationally advertised brand and/or trade names.

Any manufacturer's trade names, if used in specifications, are for the express purpose of establishing a standard of quality and coordination of design, not for the purpose of limiting competition.

3.7 Insurance Requirements

The proposer certifies that it/they can comply with the City insurance requirements :

- 1. Workers' compensation and employer's liability coverage as required by Montana law.**
- 2. Commercial general liability, including contractual and personal injury coverage's - \$750,000 per claim and \$1,500,000 per occurrence.**
- 3. 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.

In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against the City.

Proposer 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. Proposer shall maintain workers' compensation insurance coverage for all members and employees of Proposer's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

The successful proposer will be required to purchase a City business license and complete the new vendor forms in order to be eligible for payment.

3.8 Specific Insurance Requirements for Cyber/Data Information Security:

The successful Proposer 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 the Proposer maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Proposer. 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 Proposer'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.

3.9 System Security

Proposer shall ensure systems delivered are adequately secure. For purposes of this RFP, 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's use of its data and information technology or permit unauthorized access to the City's data or information technology.

The City has 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, Proposer shall provide reasonable proof, through independent audit reports, **security scans of operating systems, code or the technology environment provided**; that the proposed system meets or exceeds federal and State of Montana security requirements to ensure adequate security and privacy, confidentiality, integrity, and availability of the City'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.

3.10 Prohibited Activities and Spoofing

Licensor and its officers, employees, agents, subcontractors, and affiliated users, shall not violate or attempt to violate the security of the City or State of Montana's network or interfere or attempt to interfere with the systems, networks, authentication measures, servers or equipment, or with the use of or access to the 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 network or systems to any account or information technology resource not belonging to Proposer or its officers, employees, agents, subcontractors, and affiliated users. Proposer 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.

3.11 Questions

Questions regarding the Request for Proposals contents must be sent to the contact person listed in Section 1 no later than 2 business days prior to due date for proposals. The City will make every effort to provide a written response within 2 business days. Whenever responses to inquiries would constitute a modification or addition to the original RFP, the reply will be made in the form of an addendum to the Request for Proposals, a copy of which will be posted on the City's website.

Supplier must submit their questions via email using the “Master Q & A” form found in **Attachment C**, and provide, at a minimum, the following:

- Supplier’s name, requester, and appropriate contact information.
- The question, clearly stated.
- Specific reference to the applicable Request for Proposals section(s).

3.12 RFP Response Submission

Upon the submission of the RFP response, the supplier acknowledges that all information is accurate and complete.

All proposals must be delivered, mailed or emailed to contact person listed in Section 1.

<u>Tentative RFP Process Timeline</u>	<u>Dates</u>
RFP/legal ad done:	04/19/2024
Advertise:	04/19/2024 & 04/26/2024
Proposals must be <u>received</u> by 5:00PM:	05/10/2024
Evaluate and choose:	05/17/2024
Preliminary Council memo due:	05/23/2024
Finalized Council memo and contract due:	05/30/2024
Council meeting:	06/10/2024
Notice to Proceed:	06/14/2024

Section 4: RFP Evaluation and Selection Processes

Initial Evaluation

Proposals received will undergo an initial review to determine:

- Compliance with instructions stated in the RFP
- Compliance with proposal submittal date

Phase II Evaluation

Submittals will be evaluated in accordance with the following criteria:

Experience of Consultant to fulfill the Scope of Work	(0-30 Points)
Project Methodology and Approach	(0-40 Points)
Key Project Staff and Sub Consultants	(0-5 Points)
Cost	(0-25 Points)
Maximum Score	100 Points

The proposal with the lowest cost receives the maximum points allowed. All other proposals receive a percentage of the points available based on their cost relationship to the lowest. This is determined by applying the following formula:

(Lowest Cost/Cost Being Evaluated) x maximum points available = awarded points

The City reserves the right to conduct interviews with all or some of the Proposers at any point during the evaluation process. However, the City may determine that interviews are not necessary. In the event interviews are conducted, information provided during the interview process shall be taken into consideration when evaluating firms using the above-stated criteria.

The City also reserves the right to make such additional investigation, as it deems necessary to establish the competence and financial stability of any firm submitting a proposal.

Section 5: Scope of Work

3.1. Project Overview: The primary objective of this project is to assess and enhance the safety, multi-modal accessibility, and roadway conditions of the 21st Street Underpass, serving as a critical connection during train usage. The project aims to identify strategies for improving the underpass to ensure the safety of all users, both motorized and non-motorized. Additionally, the project will involve close collaboration with BNSF Railroad to implement necessary improvements.

3.2 Scope of Work

1. Project Initiation and Planning:

- Conduct a kickoff meeting with stakeholders, including representatives from Montana Department of Transportation, City of Billings, and BNSF Railroad, and others deemed vital.
- Develop a project process outlining the project's scope, objectives, deliverables, and timeline.
- Establish a project team and assign responsibilities.
- Review existing documentation, plans, and safety records related to the underpass.

2. Data Collection and Analysis:

- Conduct a thorough field review of the underpass, analyzing current safety conditions, signage, lighting, and visibility.
- Evaluate traffic flow and patterns. Include existing traffic count information and a count of traffic during train activity at the 27th Street crossing.
- Identify existing and potential safety hazards and areas of concern.

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.
- Engage with local law enforcement and emergency services for insights into safety issues.

4. Safety Improvement Strategies:

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

5. Multi-Modal Accessibility:
 - Evaluate the underpass's current accessibility for both motorized and non-motorized users.
 - Propose improvements to accommodate pedestrians, cyclists, and other non-motorized transportation modes.
 - Consider enhancements such as widened pathways, bike lanes, and ADA-compliant features.
6. Roadway Improvements:
 - Assess the condition of the roadway leading to and from the underpass.
 - Propose roadway improvements, including pavement rehabilitation, intersection upgrades, and traffic flow optimization.
 - Ensure compatibility with existing and future transportation plans.
7. Coordinated Planning with Railroads:
 - Collaborate closely with BNSF Railroad to understand their scheduling, operational needs, and safety requirements during train usage.
 - Identify necessary permissions and approvals for proposed improvements.
8. Planning Level Financial Planning:
 - Utilize \$7,400 of total project funds designated by the MPO for Safe and Accessible Transportation Options Planning Activities.
 - 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.
9. Regulatory Compliance and Permitting:
 - Ensure that all proposed improvements comply with local, state, and federal regulations.
 - Identify the permitting process for construction and modifications.
10. Draft Study:
 - Develop a phased implementation plan based on prioritized improvements and coordination with railroad schedules.
 - Establish timelines for each phase of implementation.
 - The consultant needs to expect a preliminary study review phase, during which the steering committee and other stakeholders will provide feedback and suggestions for corrections.
11. Final Draft Study/Review Schedule:
 - The consultant should be prepared to engage 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).

DELIVERABLES

- Weekly email updates to the Steering Committee and local governing bodies.
- 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.

SECTION 6 – CONTRACT NEGOTIATION PROCESS

The highest-ranked Proposer(s) may be invited to enter into Contract negotiations with the City. If an agreement cannot be reached with the highest-ranked Proposer, the City shall notify the Proposer and terminate negotiations. The second highest Proposer may be contacted for negotiations. This process may continue until successful negotiations are achieved. However, the City reserves the right to terminate negotiations with any Proposer should it be in the City's best interest. The City reserves the right to reject any and all proposals submitted.

ATTACHMENT A

STANDARD TERMS AND CONDITIONS

In case of default by the successful proposer or failure to deliver the goods or services within the time specified, the City Purchasing Agent, after written notice, may procure them from other sources and hold contractor responsible for excess costs occasioned thereby.

The specifications attached to the instructions to proposers establish a standard of quality desired by the City of Billings. Any proposer may submit quotations on any article-which substantially complies with these specifications as to quality, workmanship and service. The City of Billings reserves the right to make its selections of materials or services purchased, based on its best judgment as to which articles substantially comply with the requirements of the specifications. This RFP is not to be construed as a contract or commitment of any kind.

No alteration in any of the terms, conditions, delivery, quality, or specifications will be effective without prior written consent of the City of Billings.

No exception to delivery or service dates shall be allowed unless prior written approval is first obtained from the City of Billings.

The contractor warrants all articles supplied under this contract to conform to specifications herein. The contractor will deliver a warranty stating that all articles supplied under the contract are fit and sufficient for the purpose manufactured, merchantable, and free from defects.

The contractor agrees not to be discriminate against any client, employee or applicant for employment or for services, because of race, creed, color, national origin, sex or age with regard to, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or recruitment advertising; layoffs and termination; rates of pay or other forms of compensation; selection for training; rendition of services. It is further understood that any contractor who is in violation of this shall be barred forthwith from receiving awards of any purchase order for the City unless a satisfactory showing is made that discriminatory practices have terminated and that a reoccurrence of such acts are unlikely.

The City reserves the right to cancel and terminate this contract forthwith upon giving 10 days written notice to the contractor. (This provision does not apply to the purchase

of materials and equipment. A purchase order for materials and equipment is a binding contract.)

Should either party employ an attorney or attorneys or utilize the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this contract, the non-prevailing party in any action pursued in a court of competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses, and attorneys' fees, including fees for in-house attorneys, expended or incurred in connection therewith.

Where applicable, possible or required, the proposer is required to submit descriptive literature, sample material, design sketches and detailed shop drawings. Failure to submit required items may result in rejection of the proposal or termination of contract.

The successful proposer may not make any advertising or sale use of the fact that contract items are being used by purchaser and other approved agencies, under penalty of contract termination. News releases pertaining to the award resulting from the RFPs shall not be made without prior written approval of the City of Billings.

This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

The contractor may not assign or subcontract the agreement, or the right to receive reasonable performance of any act called for by the contract, shall be deemed waived by a waiver by City of a breach thereof as to any particular transaction or occurrence.

Regardless of FOB point, contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein and such loss, injury, or destruction shall not release contractor from any obligation hereunder.

ATTACHMENT B

CONDITIONS AND NON-COLLUSION FORM

To receive consideration, this form must be signed in full by a responsible, authorized agent, officer, employee or representative of your firm.

CONDITIONS AND NON-COLLUSION AGREEMENT

We have read and agree to the conditions and stipulations contained herein and to the Standard Terms and Conditions contained on the attached.

We further agree to furnish the services specified at the prices stated herein, to be delivered to the location and on that date set forth herein.

In signing this proposal, you also certify that you have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a proposal; that this proposal has been independently arrived at without collusion with any other proposer, competitor or potential competitor; that this proposal has not been knowingly disclosed prior to the due date and time to any other proposer or competitor; that the above statement is accurate under penalty of perjury.

Legal Name of Firm/Corporation

Authorized Signature

Address

Printed Name

City/State/Zip

Title

Date

Telephone Number

ATTACHMENT C
MASTER Q & A FORM
PROJECT: 21st Underpass Safety, Roadway, and Multi-Modal Access Improvement Study – LM05102024

Master Q&A	Any questions regarding this Request for Proposals should be submitted according to the process outlined below. The City will make every effort to answer within two (2) days of receiving the questions.
Q&A Process	<ol style="list-style-type: none"> 1. Prepare questions or concerns on the template provided. 2. Complete the table in full, providing a date for each question and a section of the RFP to reference (if applicable). 3. Submit the completed form via email to mattoxl@billingsmt.gov. Attach associated documents as necessary. <p>Please contact mattoxl@billingsmt.gov with any questions regarding this process.</p>

Questions from: _____ **Company:** _____

Email Address: _____

#	Date	Reference Section	Question or Comment	City Response
1				
2				
3				
4				

ATTACHMENT D

DBE GOALS AND NON-DISCRIMINATION NOTICE

DBE Goals

There are no DBE/WBE goals for this work, but firms are strongly encouraged to utilize DBE firms if applicable. A Montana certified DBE Consultant list is available and can be found on the MDT web page,

<http://www.mdt.mt.gov/business/contracting/civil/dbe.shtml>

Nondiscrimination Compliance

Consultants will be subject to Federal and Montana nondiscrimination laws and regulations (see attached notice).

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:

- (1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.