

AGENDA REPORT

DATE June 21, 2005

ITEM Consultant Services Agreement, Bloomingdale Park Lscp CTEP Project (O.F. 1306.6)

INITIATED BY Park & Recreation Department

ACTION REQUESTED Approve Agreement with L'Heureux Page Werner for Bloomingdale Park design

PRESENTED BY Park & Recreation Department

APPROVED BY Patty Gumenberg, Acting Director, Park & Recreation

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RECOMMENDATION:

It is recommended the City Commission approve the consultant services agreement with L'Heureux Page Werner in the amount of \$16,388.40 for design of the Bloomingdale Park Landscape project.

MOTION:

"I move the City Commission approve the consultant services agreement with L'Heureux Page Werner in the amount of \$16,388.40 and authorize the City Manager to execute the agreement."

SYNOPSIS & BACKGROUND:

A Community Transportation Enhancement Program (CTEP) project to improve Bloomingdale Park on the Northwest Bypass was approved by the City Commission in 2000 to include an irrigation system, seeding, trees/shrubs, approximately 1,300 lineal feet of sidewalk, pedestrian benches, welcome sign and approximately 1,250 feet of culvert to fill in an open drainage ditch.

The estimated total cost for the project, including design, is \$110,305. The Community Transportation Enhancement Program will provide \$95,502, and the City will provide the required \$14,803 matching dollars.

The Great Falls architectural firm of L'Heureux Page Werner, PC was selected to prepare a design and bidding documents for the project, as well as provide some construction phase assistance. Design phase services amount to \$15,648.27 with construction phase services amounting to \$740.13.

CTEP consultant selection procedures were followed, which involved direct negotiation with a qualified and interested firm. L'Heureux Page Werner is a local architectural firm that has designed CTEP projects in the past, involving improvements to Paris Gibson Square Museum of Art and North Entry Landscaping. The fee for the project was negotiated at a cost-plus-fixed-fee of \$16,388.40. This fee will include design and preparation of a biddable set of construction documents, including plans and specifications. The firm will also provide technical assistance during the construction phase. However, most construction oversight will be performed by Park & Recreation and City Engineering staff.

The project will be designed and administered in accordance with applicable local, State and Federal standards and requirements. The Park & Recreation Department, with assistance from the City-County Planning office, will administer the consultant agreement and oversee and participate in project design. The City Engineering Department will assist through the preparation of a survey and review of the storm drain design.

FINANCIAL IMPACT:

This contract will be paid through Community Transportation Enhancement Program funds (\$14,146), with matching dollars provided by the City (\$2,193).

Attach: Consultant Services Agreement (2)

cc: Dave Dobbs, Engineering
Andrew Finch, City-County Planning

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____, 2005, by and between the **City of Great Falls**, Cascade County, Montana, from now on referred to as the “**City**”, and **L’Heureux Page Werner P.C.**, from now on referred to as the “**Consultant**”, whose principal office is located at **15 Fifth Street South, Great Falls, Montana 59401**.

The **Montana Department of Transportation**, herein referred to as the “**MDT**”, has approved the proposed City’s enhancement project funded under Montana’s federal-aid Community Transportation Enhancement Program (CTEP) and the City desires to employ the Consultant to furnish certain specific services of an architectural/engineering nature as described below; and,

The Consultant agrees to provide such services in accordance with the conditions provided and to carry out all the duties and obligations imposed by the Agreement; and,

The parties agree as follows, subject to the terms, conditions, and provisions and in consideration of the mutual covenants contained herein, the Consultant agrees to perform for the City, and the City agrees to accept from the Consultant, the following services: pre-design, design, bidding and construction engineering.

The project development includes evaluations, surveys, environmental research and documentation, design for a construction contract, and any other specified items, except as explicitly stated otherwise. Federal-aid project **STPE 5299(53), BLOOMINGDALE PARK LANDSCAPE - GTF, CONTROL NO. 4653, O.F. 1306.6, generally located adjacent to the Northwest Bypass, between Watson Coulee Rd. and 15th St. NW, Great Falls Montana.**

This project will involve improvements to Bloomingdale Park to include landscape design and construction of approximately 1,300 lineal feet of sidewalk, and approximately 1,250 feet of storm drain and fill material to cover an open drainage ditch, an automatic irrigation system, sod/seeding, trees/shrubs, earthwork, topsoil, pedestrian benches, and welcome sign. All work will be in accordance with current design standards and ADA requirements.

All referenced documents are current and updated as of the date of this Agreement. In addition, the Consultant may obtain copies of all manuals, guidelines, and other MDT documents from MDT’s Community Transportation Enhancement Program Office. The Consultant may be charged for copies of documents.

ARTICLE I SCOPE OF WORK

SECTION 1 - STANDARD OF CARE

The Consultant's performance of all services, obligations, and responsibilities under this Agreement will be in a manner that is consistent with that degree of care and skill ordinarily exercised by members of the engineering profession currently practicing under similar circumstances.

SECTION 2 - GENERAL

The Consultant, in performance of all work called for under this Agreement, will furnish all services for pre-design, design, bidding and construction engineering. The Consultant must become familiar with the written standard practices before beginning any of the work on this Project. All work required under this Consultant Services Agreement must be performed by the Consultant in accordance with these standard practices and any special requirements contained in this document. Specific project scope is outlined in Section 4 of this Article.

SECTION 3 - PROJECT DEVELOPMENT AND DESIGN

The Consultant will develop the project, conduct all necessary surveys, evaluations, and analyses, perform designs, and prepare project manuals for a transportation enhancement project.

Development of the Project will be in accordance with MDT's CTEP Guidelines. The Consultant's work will be performed in accordance with the most current version of the following books or manuals, as applicable. MDT specific CADD (microstation) and other software requirements do not apply to work performed under this Agreement.

MDT CTEP Guidelines

Appendix CTEP Guidelines of CSA

Montana Road Design Manual

Montana Bridge Design Manual

Hydraulics Manual

Survey Manual

Right-of-Way Manual

Traffic Manual

Construction Manual

AASHTO Standard Specifications for Highway Bridges

Montana Detailed Drawings

Project Development Procedures

Montana Standard Specifications for Road and Bridge Construction

Consultant Users Manual & Activity Descriptions

Manual on Uniform Traffic Control Devices (MUTCD)

American Society for Testing and Materials (ASTM)

Montana Materials Manual of Test Procedures

MDT CADD Standards Manual

Approach Standards for Montana Highways

Public Involvement Handbook

AASHTO Guide for the Development of Bicycle Facilities

AASHTO Guide Specification for Design of Pedestrian Bridges

Montana Public Works Standard Specifications

SECTION 4 – SPECIFIC PROJECT SCOPE

The Consultant will perform the services itemized in Exhibit "E", as attached and by this reference made a part of this Agreement.

SECTION 5 - REPORTS

- A. The Consultant will prepare the minutes for all meetings involved with the Project and will provide a copy of each to the City.
- B. The Consultant will identify and justify all exceptions to design standards (see Art. I, Sec. 3) that are found to be necessary during the design of the Project. The justification must include economic analysis. The Consultant will submit a Design Exception Request to the City for approval by the MDT.

SECTION 6 - OBLIGATIONS OF THE CITY TO THE CONSULTANT

In addition to the obligations of the City to the Consultant listed elsewhere in this agreement, the City will:

- A. As far as possible cooperate with the Consultant in making necessary arrangements with public officials and with such individuals as the Consultant may need to contact for advice, counsel, and information.
- B. Provide timely approvals of the Consultant's formal submittals in writing in all instances. If verbal approvals are first given in the interest of progressing the work, the City shall confirm such verbal approvals in writing at the earliest possible time.
- C. The Consultant must provide to the City a list of the information needed by the Consultant for rendering the services required under this Agreement. The City will provide the Consultant such information as is available to the City and the City's consultants and contractors. If materials prepared by the City or its consultants or contractors are incomplete or erroneous, the City will compensate the Consultant for any work required to correct them. Information generated by sources other than the City, MDT or their consultants or contractors may be utilized by the Consultant, but the City and MDT assumes no liability for its accuracy or completeness.
- D. Furnish copies of the City's existing as-built construction and right-and-way plans (as available).

- E. The City will not reuse or make or permit to be made any modifications to the Consultant's final design and drawings without the prior written authorization of the Consultant. The City shall make no claim against the Consultant arising from any unauthorized reuse or modification of the design and drawings.
- F. Give prompt written notice to the Consultant of any development that affects the scope or time of performance of the Consultant's services, or any defect or nonconformance in the Consultant's services or in the work of any subconsultant.

SECTION 7 - CONFERENCES, PROGRESS REPORTS, AND LIAISON

- A. Conferences will be held as necessary between representatives of the City and the Consultant to review and discuss progress and any matters pertinent to any phase of work. Additional compensation will not be made for those conferences.
- B. The Consultant will be responsible to and will report to *Giles Salyer*, the City's liaison, for payment, submission of information, etc. All submittals will be made through *Ryan Smith*, who will be the Consultant's liaison.
- C. Requests for visits to the site or at the office of the Consultant may be made by the City, representatives of the MDT, Federal Highway Administration, or the Consultant in conjunction with any other party or parties for the purpose of review or inspection of the work.
- D. The Consultant will furnish to the City a brief narrative progress report on the first day of each month showing the status of the work on the Project. The report will cover all phases of work accomplished during the period of the report and show the percentage of work completed for each phase of the Project. Mention should be made of any matters that may have adversely affected the progress of the work.
- E. The Consultant, upon City's direction, will confer with public agencies, including planning authorities, giving consideration to suggestions and plans of such agencies.
- F. The Consultant will submit to the City the professional history, classification, and salary of each person to be assigned to the Project. The City will reserve the right to approve all such personnel and will so inform the Consultant of such approval in writing.

SECTION 8 - PERSONNEL

The Consultant must have in its employ a registered Professional Engineer in the State of Montana.

SECTION 9 - ENDORSEMENTS

The Consultant will furnish professional stamps, statements, or other suitable means to signify responsible endorsement of work.

**ARTICLE II
TIME OF BEGINNING AND COMPLETION**

SECTION 1 - PROJECT COMPLETION TIME

- A. The Consultant agrees to start work on the professional services outlined in Article I of this Consultant Services Agreement within *ten (10)* days after receipt of written notice to proceed from the City.
- B. Design phase services will be completed no later than 6 months after notice to proceed is given. Construction phase services will be completed within 30 days of issuing the Certification of Substantial Completion to the contractor.
- C. **Except as provided below, all work as specified in Article I of this Agreement must be completed by May 30, 2006.**
- D. If during the Project development, the Consultant becomes aware of circumstances that have or may have an adverse affect on the scheduled completion of any or all phases of the Project, or that the Consultant will be unable to meet any schedule deadlines or submittal dates, the consultant will immediately notify the City in writing. The City and the Consultant will together take the steps necessary to maintain the Project on schedule. The Project completion schedule will be adjusted only if necessary.
- E. The Consultant is not responsible for delays caused by factors beyond the Consultant's control, including delays because of strikes, lockouts, work slowdowns, or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the City to furnish timely information or approve

or disapprove of the Consultant's services or work product promptly, or delays caused by faulty performance by the City.

- F. The Consultant submits the final contract plans package to the City and MDT for review. The Consultant will make any revisions to the plans that are required as a result of this review.
- G. Any alteration in the time schedule under Article II, Section 1C, shall be subject to the provisions of Article II, Section 2B.

SECTION 2 - CHANGES

- A. If the City determines it to be necessary in the execution of the work to make any alteration that will increase the scope of work outlined in this Agreement, the time limits specified herein will be adjusted as provided in Article II, Section 2B.
- B. If additional work is requested by the City or delays beyond the control of the Consultant prevent completion of the services to be performed under this Agreement in the time specified, the City will grant an equitable adjustment of the Agreement amount and/or time for performance for all affected phases of the work. The Consultant shall provide a written request for an adjustment within *ten (10)* days from the date the Consultant receives notice of the reasons for the requested adjustment.

ARTICLE III PAYMENT

SECTION 1 - PAYMENT FOR SERVICES

This Agreement will be administered on a cost plus fixed fee basis. The salaries, overhead rate, salary additive rate, and other compensatory rates, as included in the Consultant's cost proposal (Exhibit "D"), will remain fixed for the duration of this Agreement.

SECTION 2 - DEFINITIONS

A. Payroll Costs

- 1. Payroll costs shall be defined as the actual salaries and fringe benefit cost of all personnel working on the Project. The City agrees to pay such actual payroll items as Social Security, Unemployment Compensation, excise and payroll taxes, employees' compensation insurance, sick leave, vacation, holiday pay and employees' retirement, employee medical and disability insurance, in addition to actual salaries. The City agrees to reimburse the Consultant for overtime at the rate of one and one-half (1½) times the hourly rate paid each employee. Requests for authorization of overtime will require prior written approval of the City..
- 2. Overtime is all hours worked in excess of forty (40) hours per week.
- 3. The hourly rate for salaried employees shall be determined from their annual salary divided by two thousand eighty (2080) hours.

B. General Administrative Overhead

General administrative overhead of the Consultant is applicable to the payroll costs described in Paragraph A. Payroll Costs. Such overhead may include, but not be limited to, the following: administrative, clerical, and unallocated labor; employee bonuses and incentive awards; general travel expenses; depreciation; dues and subscriptions; computer and equipment expenses; equipment rental; freight; general business insurance; employee travel accident and life insurance; legal and accounting; office, drafting room, and laboratory supplies; professional society fees; recruiting; rent; building and equipment repairs and maintenance; taxes and licenses; telephone and telegraph (except toll charges specifically related to each individual project); general travel and employee relocation; utilities and janitorial services; and office miscellaneous expenses. Specifically excluded are bad debts and interest on borrowed capital.

C. Out-of-Pocket and Subcontract Costs

- 1. Out-of-Pocket expenses directly related to the Project shall be reimbursed at cost. They will include all travel and subsistence. All out-of-pocket costs shall require approval of the City. It must not include regular office expenses such as rent, light, normal equipment, and similar expenses. It will include the cost of printing.
- 2. Subcontractor charges directly related to the Project shall be reimbursed at cost. All subcontract costs shall require approval of the City.

D. Payment of Services

Payment will be made on the basis of and in accordance with the following schedules:

1. The Consultant will be reimbursed for the actual payroll costs as set forth in Article III, Section 2, Paragraph A, for the time such employees are directly utilized on work necessary to fulfill the terms of this Agreement. To this amount will be added the general administrative overhead costs as set forth in Article III, Section 2, Paragraph B.
2. The Consultant shall be reimbursed for actual out-of-pocket expenses and subcontract costs as specified in Article III, Section 2, Paragraph C.
3. The Consultant will be paid a lump sum fixed fee not to exceed One thousand nine hundred eighty-four dollars and forty-nine cents (\$1,984.49).
4. The total payment to the Consultant (including the lump sum fixed fee) for the work covered under this Agreement will not exceed Sixteen Thousand Three Hundred Eighty-Eight Dollars and Forty Cents (\$16,388.40), as specified in the consultant's cost proposal, attached as Exhibit "D", which by reference, is hereby made a part of this Agreement.
5. All costs related to this project are to be in conformance with 48 CFR 31.2 of the Code of Federal Regulations.

E. Partial and Final Payments

Partial payments of the foregoing will be made at monthly intervals as the work progresses, based upon certified invoices received, compatible with current practices and acceptable to the City. Payments will be based upon the estimated percentage of completion of work. ***Every request for payment must include one original of the certified invoice, along with one original of the progress report.***

Whenever the Consultant completes the work in accordance with the terms of the Agreement, the City's Liaison will certify to the completion and recommend to the City that final acceptance be made. The City will notify the Consultant that acceptance has been made.

The City reserves the right to withhold payment of the Consultant's final payment until any and all just claims filed with the City against the Agreement have been settled. Accomplishment of an affidavit on the final claim by the Consultant shall constitute full acceptance by the Consultant of the total amount shown as the entire amount due the Consultant under the agreement.

F. Consultant's Cost Proposal

The attached Consultant's Cost Proposal, Exhibit "D", by this reference is made a part of this Agreement. If this document conflicts with the Agreement, the Agreement will govern.

SECTION 3 - INSPECTION AND AUDIT

All books, papers, records, payrolls, vouchers, and invoices relating to costs and expenditures incurred as to the performance of the services specified in Article I by the Consultant or any of its subcontractors shall be made available to the City, MDT, the Legislative Auditor and Legislative Fiscal Analyst, the Federal Highway Administration or their authorized representatives, for audit and review, at the Consultant's respective offices, at all reasonable times during the Agreement period and for three years from the date of final MDT payment.

SECTION 4 - TYPE OF CONTRACT

The Consultant agrees that this is a Consultant Services Agreement and that the Consultant is an independent contractor and not an employee of the City or MDT. It is further understood by the Consultant that no deductions from the payments under this Agreement for federal or state income tax, FICA (social security), retirement, or other reasons will be withheld by the City or MDT.

**ARTICLE IV
MISCELLANEOUS PROVISIONS**

SECTION 1 - TERMINATION OR ABANDONMENT

The City may terminate this Agreement at any time upon ***fifteen (15)*** days written notice to the Consultant, for any of the following:

- A. Due to unforeseen circumstances it is possible that it could be in the best public interest to abandon, reduce, or change the Project covered by this Agreement. If the City believes that is appropriate, this Consultant Agreement will be terminated.
- B. Due to adverse weather, flood, earthquake, etc., or any other condition or conditions beyond the control of the City and/or Consultant, which may adversely affect the work to be performed, this Agreement may be terminated by the City.
- C. Due to a change in the scope, character, or complexity of all or any part of the work under this Agreement, the City may decide that it is in the best public interest to terminate this Agreement.
- D. Should the services of the Consultant prove unsatisfactory or because of the failure of the Consultant to perform its work with due diligence or to complete the required services or any part of it within the time limits specified, this Agreement may be terminated. In any such case, however, the Consultant shall be paid the reasonable value of such services rendered up to the time of termination. The reasonable value of such services shall be based on the method of payment as defined in the Agreement. The approved percentage of completion will be determined by mutual agreement between the City and the Consultant.

SECTION 2 - GENERAL COMPLIANCE WITH LAWS

- A. The Consultant will observe and comply with existing laws, ordinances, and regulations.
- B. The Consultant agrees to indemnify and hold harmless the City, state and MDT, their officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, demands, and causes of action of any kind or character (including reasonable attorneys fees and costs of defense), to the extent caused by the Consultant's negligent acts, errors, or omissions arising out of services performed, or in any way resulting from a negligent act, error, or omission of the Consultant and/or its agents, employees, subcontractors, or its representatives under this Agreement.
- C. The Consultant agrees to indemnify and hold harmless the City, state and MDT, their officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, demands, and causes of action of any kind or character (including reasonable attorneys fees and costs of defense), to the extent caused by the Consultant's non-negligent but wrongful acts, errors, or omissions arising out of services performed, or in any way resulting from a non-negligent but wrongful act, error, or omission of the Consultant and/or its agents, employees, subcontractors, or its representatives under this Agreement.
- D. The City agrees to indemnify and hold harmless the Consultant from and against all claims, demands, and causes of action of any kind or character (including reasonable attorneys fees and costs of defense), to the extent caused by the City's negligent acts, errors, or omissions arising out of services performed, or in any way resulting from a negligent act, error, or omission of the City and/or its agents or employees under this Agreement.
- E. The City agrees to indemnify and hold harmless the Consultant from and against all claims, demands, and causes of action of any kind or character (including reasonable attorneys fees and costs of defense), to the extent caused by the City's non-negligent but wrongful acts, errors, or omissions arising out of services performed, or in any way resulting from a non-negligent but wrongful act, error, or omission of the City and/or its agents or employees under this Agreement.

SECTION 3 - OWNERSHIP OF DOCUMENTS

Upon completion of services or termination of this Agreement, all drawings, map originals, survey notes, field books, calculations, reports, and all data used will become the property of the City.

Following the City's acceptance of such documents, the Consultant will be indemnified, defended, and held harmless only for any changes or revisions to the plans and related documents that the Consultant prepares under this Agreement that are made without Consultant's knowledge and written consent.

SECTION 4 - SUBCONTRACTING, ASSIGNMENT OR TRANSFER

The subcontracting, assignment, or transfer of any part of this Agreement, except as shown in the Consultant's proposal, is prohibited unless prior written approval is obtained from the City.

Subcontracts that exceed \$10,000 in cost will contain all required provisions of the prime agreement.

SECTION 5 - CHANGES OF WORK

If, during the term of the Agreement, additional services are required, other than those services specified above, or major changes in the work become necessary or desirable, the City may make written request to the Consultant to perform such services or make such changes. If the Consultant is of the opinion that any work it has been requested to perform is beyond the scope of this Agreement and constitutes extra work, the Consultant will promptly notify the City in writing prior to performing such work. If the City agrees that such work does constitute extra work, the Consultant shall be reimbursed on a mutually agreed basis, and additional time for completion of the Agreement shall be given. Before such work is undertaken, the Consultant and the City will, by mutual written agreement, determine the scope of the work and the cost thereof.

Compensation will be determined before the operations begin and as soon as circumstances permit. If a mutual agreement is not reached in negotiations for an increase in such work, the City will use other methods to accomplish the work.

SECTION 6 - MEETINGS AND PRESENTATIONS

The Consultant and its subcontractors, when directed by the City, will attend and make appropriate presentations at meetings conducted for the purpose of discussing with the public or local, state, and federal officials the effect and objectives of the proposed Project or other matters pertaining to the Project.

The Consultant will prepare exhibits and visual aids necessary to clarify the proposed Project to the participants of the meetings.

SECTION 7 - ACCURACY OF WORK

The Consultant will make necessary revisions or corrections resulting from errors and omissions on the part of the Consultant without additional compensation (see Article I, Sec.1).

If any errors are made by the Consultant in any phase of its work under this Agreement that may require additional field or office work, the Consultant will be promptly notified in writing and will be required to perform such additional work as may be necessary to correct these errors without undue delay and without additional cost to the City. Acceptance of its work will not relieve the Consultant of the responsibility for subsequent correction of any such errors and the clarification of any known ambiguities.

Construction problems or conflicts arising as a result of design or plan errors or omissions will be considered the Consultant's responsibility. The City will be responsible for any unreasonable interpretation it makes of the Consultant's design, drawings, and plans. The Consultant will be notified of all such errors and omissions and will meet with City representatives to assist in determining corrective action at no cost to the City. If design errors are found to be a cause of the construction problem or conflict, the Consultant will have the opportunity to be involved in discussions to determine the desired corrective action. Following discussions between the City and the Consultant, the City will provide the Consultant with its written demand letter for the total costs of the corrective action.

The Consultant agrees to provide proof of errors and omissions insurance coverage not less than ***One-Half Million Dollars (\$500,000)*** for the entire period of the Project for which consultant services are required under this Agreement.

SECTION 8 - VENUE

In the event of litigation, venue shall be the 8th Judicial District in and for the County of Cascade, State of Montana, and the Agreement shall be interpreted according to the laws of Montana.

SECTION 9 - NONDISCRIMINATION

Reference is made to Exhibit "C", which by this reference is hereby made a part of this Agreement.

SECTION 10 - CERTIFICATION

The parties to this Agreement have each executed a certification. The certification of the Consultant, labeled Exhibit "A", is attached and by this reference made a part of this Agreement. The certification of the City, labeled Exhibit "B", is attached and by this reference made a part of this Agreement.

SECTION 11 - DBE GOAL

The Consultant will make all reasonable efforts to utilize the MDT's currently certified DBE firms for applicable subcontracting services that are necessary. The Appendix CTEP Guidelines of Consultant Services Agreement contains instructions for accessing the current Internet listing of MDT's certified DBE firms. Leslie Wootan, Compliance Specialist will be contacted at (406) 444 -6337, should subcontracting opportunities arise.

Each invoice submitted in accordance with Article III, Section 2E, must state the established DBE goal for the project and the current and cumulative amounts expended to date towards that goal.

SECTION 12 – WORKERS’ COMPENSATION COVERAGE

The Consultant agrees to provide proof that it has a policy for Workers’ Compensation Insurance or proof that it has elected to be exempt from such coverage and its election has been approved by the Department of Labor and Industry. The Consultant agrees to maintain Workers’ Compensation Coverage for the entire period of this Agreement.

SECTION 13 - CONSULTANT'S PLANS RESPONSIBILITY

The Consultant will be responsible for the quality of the final plans package (see Article I, Sec. 1), as the City will not make a detailed check of the plans. The Consultant will stamp and sign the title sheet of the final contract plans package. The Consultant's name will be shown on all plan sheets of the Project. If Specialty Plans are involved (for example, Bridge Plans, Sewer/Water Plans prepared for a city and included into the City's plan package, or similar plans), the Consultant will stamp and sign each page of the plans.

The final plans package will be assembled and shall take on the form of a Project Manual and drawings as defined in the CTEP Guidelines.

SECTION 14 - ENTIRE AGREEMENT & MODIFICATIONS

This Agreement, including the documents referenced or attached here, is the entire agreement of the parties. Any modification requires a written amendment signed by authorized representatives of both parties.

SECTION 15 – THIRD PARTY BENEFICIARIES

This Agreement is not intended to create anyone as a third party beneficiary or to authorize anyone not a party to the Agreement to maintain an action for damages pursuant to the terms or provisions of this Agreement.

SECTION 16 - CONFIDENTIALITY OF INFORMATION

The Consultant understands that the information contained in and created by this Agreement will be part of the public bidding process, and that it must remain confidential between the Consultant and the City until the Project has been awarded. Failure by the Consultant or its employees to keep that information confidential will be considered a breach of this Agreement, and may require the City to have another consultant rework the work product of this Agreement, potentially delaying the Project and costing the City additional funds. Such an act by the Consultant will be a violation of Article IV, Sec. 2, and subject all persons or parties involved to possible debarment under ARM Sec. 18.d.101 *et seq.*

IN WITNESS, the parties involved have sealed this Agreement by their signatures.

APPROVED FOR
L'Heureux Page Werner, P.C.

APPROVED FOR
THE CITY OF GREAT FALLS

By: _____
Stephen M. L'Heureux, President

By: _____
John W. Lawton, City Manager

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____

By _____
Carolyn Horst, Deputy City Clerk

Date: _____

Date: _____

FEDERAL EMPLOYER'S I.D. NO.

APPROVED FOR LEGAL CONTENT

By: _____
David V. Gliko, City Attorney

Date: _____

EXHIBIT "A"
CERTIFICATE OF CONSULTANT

I am a duly authorized representative of the firm of L'Heureux Page Werner, P.C., whose address is 15 Fifth Street South, Great Falls, Montana, 59401 and I hereby certify as follows:

1. That neither the firm nor any person associated therewith in a management capacity:
 - (a) has employed or retained for commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract;
 - (b) has agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
 - (c) has paid or agreed to pay to any firm, organization, or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract; with no exceptions.

2. That neither the firm, nor any person who has critical influence on or substantial control in the firm, nor any person associated therewith in a management or supervisory capacity:
 - (a) is currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - (b) has, within a three-year period preceding this contract, been convicted or had a civil judgment rendered against them for commission of fraud; a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; violation of antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property.
 - (c) is currently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses listed in paragraph 2(b) of this certification.
 - (d) has had one or more public transactions terminated for cause or default within a three-year period preceding this contract.

3. That to the best of my knowledge and belief:
 - (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for

influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

I acknowledge that this certificate is to be furnished to the City of Great Falls and the Federal Highway Administration, in connection with this contract involving participation of Federal-Aid CTEP funds, and is subject to applicable state and federal laws, both criminal and civil.

Date

Stephen M. L'Heureux, President

EXHIBIT "B"
CERTIFICATE OF THE CITY OF GREAT FALLS

I hereby certify that I am the City Manager of the City of Great Falls, Montana, and that the above consulting firm, or his representatives has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this contract, to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay to any firm, person or organization, any fee, contribution, donation, or consideration of any kind; with no exceptions.

I acknowledge that this certificate is to be furnished to the Montana Department of Transportation in connection with this contract involving participation of Federal-Aid CTEP funds, and is subject to applicable state and federal laws, both criminal and civil.

Date

John W. Lawton, City Manager

EXHIBIT "C"
COMPLIANCE WITH STATE AND FEDERAL CIVIL RIGHTS LAWS

During the performance of this Agreement the Consultant, or itself, its assignees and successors in interest (referred to as the Consultant), agrees as follows:

A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS.

(1) Compliance with Regulations

The Consultant will comply with the Regulations of the Department of Transportation relative to non-discrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) Non-discrimination

In accordance with Section 207 of the Governmental Code of Fair Practices, Title 49, Chapter 3, M.C.A. the Consultant will assure that hiring of persons who will perform work on this contract after award and prior to completion will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical, or mental handicap, or national origin by the persons performing the contract.

The contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Title 49, Code of Federal Regulation, Part 21, including employment practices, when the contract covers a program set forth in Appendix A of the regulations.

(3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations, either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurement of materials or equipment, each potential sub-consultant or supplier will be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to non-discrimination on the ground of race, color or national origin.

(4) Information and Reports

The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant to, and will permit access to its books, records, accounts, other sources of information, any of its facilities as may be determined by the Government or the Federal Highway Administration to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant will so certify to the Government, or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.

(5) Sanctions for Non-compliance

In the even of the Consultant's non-compliance with the non-discrimination provisions of his Agreement, the Government will impose such agreement sanctions as it or the Federal Highway Administration may determine to be appropriate including, but not limited to,

- (a) Withholding of payments to the Consultant under the Agreement until the Consultant complies, and/or
- (b) Cancellation, termination, or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions

The Consultant will include the provisions of paragraph (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the regulations, order, or instructions issued.

The Consultant will take such action with respect to any subcontract or procurement as the Government or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however that, in the event a Consultant becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

B) COMPLIANCE WITH MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, 49-3-207, MCA.

In accordance with Section 49-3-207, MCA, Consultant agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

EXHIBIT "D"
CONSULTANT COST ESTIMATE AND UNIT LABOR COSTS

PRELIMINARY ENGINEERING

Work Elements - Tasks	Labor Categories			
	Project Architect	Production Designer	Estimator	Clerical
Schematic Design	57.50	6.50	3.00	
Final Design	85.00	10.00	3.00	
Bidding	1.50			4.00
Construction Administration				
Total Hours	144.00	16.50	6.00	4.00

Labor Categories	Total Hours	Base Wage Rate	Labor Cost
Project Architect	144.00	\$25.50	\$3,672.00
Production Designer	16.50	\$20.60	\$339.90
Estimator	6.00	\$26.01	\$156.06
Clerical	4.00	\$11.47	\$45.88
Total Labor Cost			\$4,213.84

Total Labor Cost		\$4,213.84
Fringe Benefit Cost	1.19% x Total Labor Cost	\$800.63
G&A Overhead Cost	1.51% x Total Labor Cost	\$7,571.85
Total Payroll Cost		\$12,586.32

Direct Expenses		
Advertising		\$500.00
Contract Documents (20 sets)		\$644.00
Shipping Costs & Postage		\$30.00
Copies/Prints		\$0
Subcontractor Expenses		\$0
Profit/Fixed Fee		\$1,887.95
Preliminary Engineering Costs		\$15,648.27
Construction Engineering Costs		\$740.13
Total Project Costs		\$16,388.40

I certify that the cost or pricing data submitted and identified to the City during the selection and negotiation process is current, complete and accurate as of the date of the agreement on the price.

 Signature
CONSTRUCTION ENGINEERING

 Date

Work Elements - Tasks	Labor Categories			
	Project Architect	Production Designer	Estimator	Clerical
Schematic Design				
Final Design				
Bidding				
Construction Administration	8.00			1.00
Total Hours	8.00	0.00	0.00	1.00

Labor Categories	Total Hours	Base Wage Rate	Labor Cost
Project Architect	8.00	\$25.50	\$204.00
Production Designer			
Estimator			
Clerical	1.00	\$11.47	\$11.47
Total Labor Cost			\$215.47

Total Labor Cost		\$215.47
Fringe Benefit Cost	1.19% x Total Labor Cost	\$40.94
G&A Overhead Cost	1.51% x Total Labor Cost	\$387.18
Total Payroll Cost		\$643.59

Direct Expenses

Advertising	\$0
Contract Documents (20 sets)	\$0
Shipping Costs & Postage	\$0
Copies/Prints	\$0
Subcontractor Expenses	\$0

Profit/Fixed Fee \$96.54

Preliminary Engineering Costs \$15,648.27

Construction Engineering Costs \$740.13

Total Project Costs \$16,388.40

I certify that the cost or pricing data submitted and identified to the City during the selection and negotiation process is current, complete and accurate as of the date of the agreement on the price.

Signature

Date

**EXHIBIT "E"
DESCRIPTION OF WORK**

Project Title: Bloomingdale Park Lscape-GTF; STPE 5299(53); Control No. 4653; O.F. 1306.6

General Location: Adjacent to the Northwest Bypass, between Watson Coulee Rd. and 15th St. NW, Great Falls, Montana

General Project Description: Improvements to Bloomingdale Park to include landscape design and construction of approximately 1,300 lineal feet of sidewalk, and approximately 1,250 feet of storm drain and fill material to cover an open drainage ditch, an automatic irrigation system, sod/seeding, trees/shrubs, earthwork, topsoil, pedestrian benches, and welcome sign.

Specific Work Elements:

1. Preliminary Design Phase

- A. ***Pre-design Meeting.*** An on-site field review/pre-design meeting will be held with the City to familiarize the Consultant with the project and concerns of all agencies and partners.
- B. ***Research, Collect and Assemble Design Data***
 - Control Location and Topography Survey Data
 - Utility/roadway locations and easements
 - Environmental Data
 - City Staff and Other Community Input, if any
- C. ***Surveys*** – Topographic and location of any existing property pins or right-of-way monuments to be performed by City and provided to consultant in AutoCad 2000 format. Survey will include location of roadside features such as signs, hydrants, etc. as well as known utility locations. The City will coordinate with the Montana Department of Transportation (MDT) to obtain available right-of-way information, if available.
- D. ***Environmental Data***

The City will research, assemble, and review existing data. No historical/cultural resource surveys are planned. A Group (c) Categorical Exclusion is anticipated for the environmental documentation.
- E. ***Coordination***

The Consultant will coordinate all design aspects of the project with the City and, where appropriate, the MDT.
- F. ***Pre-design Report***

The Consultant will prepare a pre-design report. The report shall include but shall not be limited exclusively to the following:

 - Design Recommendations, including but not limited to a conceptual drawing of the Welcome sign and related landscaping, landscaping proposal for the remainder of the project, proposed plant materials, etc.
 - Preliminary Construction Cost Estimate
 - Construction Phasing and Schedule
 - Issues, such as permitting, construction, drainage, right-of-way limitations, utility conflicts, etc.

- G. *Preliminary Plans and Specifications (90%)***
- The Consultant will submit to the City four (3) sets of the preliminary plans and specifications at the 90% completion stage for review and comment.
 - A meeting with the City and the Consultant will be held to discuss 90% plans/specs.

2. Final Design Phase

- A. *Plans/Specifications/Project Manual (99%)***
- The Consultant shall submit to the City two (3) sets of the plans, specifications and project manual for review.
- B. *Plans/Specifications/Project Manual (100%)***
- The Consultant shall coordinate the final design with the City. Plans, specifications and project manual shall be prepared in standard MDT/CTEP format.
 - The Consultant shall submit to the City four (4) sets of the plans, specifications, project manual and final cost estimate (all signed and sealed by the Consultant). The City shall coordinate review of the plans, specifications, project manual and cost estimate by MDT.
 - If MDT has changes, the Consultant shall make corrections to documents, including any necessary re-design, and prepare final sets. Six (6) final sets, including cost estimates, will be provided to the City: Engineering (1); Planning (1); Park & Recreation (1); MDT (2) City Clerk (1).
- C. *Permits/Legal Documents***
- The City shall obtain any permits required for construction of the project.

3. Bidding Phase

The Consultant shall advertise for bids. The Consultant will prepare the addenda, conduct the pre-bid conference and/or walkthrough, prepare meeting minutes for the pre-bid conference, provide plan and project manual production and distribution, attend the bid opening, review bids, and recommend award.

4. Construction Phase

- A. The City shall secure two signed sets of bidding documents from contractor, including insurance, bonds, signed agreement, etc.
- B. The City and Consultant shall jointly conduct a Pre-Construction Conference and prepare minutes
- C. The Consultant shall provide four (4) sets of Construction Plans and Specifications to Contractor
- D. The Contractor shall provide construction surveying (alignment, grade and right of way)
- E. The City shall provide Project Resident Representative, including work inspections, as needed, and daily site visits
- F. The Consultant shall review and approve Submittals and Shop Drawings
- G. The City shall conduct quality control testing for construction materials and methods
- H. The City shall conduct contract administration, including review and approval of contractor pay requests, perform on site EEO/wage rate inspections and collect contractor payrolls
- I. The City and Consultant shall arrange for and attend coordination meetings with contractor and City and Consultant, as needed

- J. The Consultant shall, in coordination with and cooperation by the City, prepare and submit reproducible “As-built” Drawings
- K. The Consultant shall prepare work directives and change orders, as required
- L. The City and Consultant shall perform inspection for Substantial Completion, as well as a final inspection
- M. The City shall obtain lien waivers, etc. and otherwise process contract and project closeout