

AGENDA REPORT

DATE October 4, 2005

ITEM Contract termination and new contract award for design of lighting for 10th St. Bridge – O.F. 1180.6

INITIATED BY Bridge Rehabilitation Advisory Group/Public Works/Planning

ACTION REQUESTED Terminate contract with John Kennedy and award new contract to Brilliant Lighting Design, Inc.

PREPARED & PRESENTED BY Andrew Finch, Senior Planner

APPROVED BY Benjamin Rangel, Planning Director

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RECOMMENDATION:

Staff recommends the City Commission approve the following motion.

MOTION:

"I move the City Commission terminate the contract with John Kennedy for design of lighting for the 10th Street Bridge and award same to Brilliant Lighting Design, Inc. in the amount of \$9,000."

SYNOPSIS:

A design contract awarded to John Kennedy in February 2005 must be terminated due to the consultant's inability to perform due to health problems. No work has been performed on the contract. Termination of the contract is allowed under Article IV, Section 1 – Termination or Abandonment.

A new consultant must be hired to design the lighting of the historic 10th Street Bridge. To that end, a contract has been negotiated with Brilliant Lighting Design, Inc. to perform the work.

BACKGROUND:

In 2000, the City Commission approved a CTEP project for accent lighting of and period lighting on the Historic 10th Street Bridge. While eligible for CTEP funding, certain elements of the project can only be constructed after completion of the bridge deck, which may not be complete for some time. One element, "monument" lighting of the bridge, can and will proceed. The other main element, period street lights on the bridge, will be postponed until the completion of the decking.

An agreement was negotiated with John Kennedy, a nationally known lighting expert, to design the accent or monument lighting of the Bridge. After signing the agreement, Mr. Kennedy's health deteriorated to such an extent that he has become unable to perform the work. To that end, his contract in the amount of \$7,500 must be terminated.

A new contract for the same work has been negotiated with a similar consultant, Brilliant Lighting Design, Inc. The contract amount of \$9,000 is higher due to two additional trips to Great Falls. It will be paid with 86.58% Federal CTEP funds (\$7,792.20) and 13/42% from Preservation Cascade, Inc. (\$1,207.8).

- Attachment: 1) Professional Services Agreement dated February 15, 2005 with John Kennedy
- 2) Professional Services Agreement with Brilliant Lighting Design, Inc.

cc: Jim Rearden, Public Works
Preservation Cascade, Inc.

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this _____ day of _____, 2005 by and between the **City of Great Falls**, Montana, herein referred to as the "**City**" and **Brilliant Lighting Design, Inc.**, herein referred to as the "**Consultant**", whose principle office is located at 750 NE 61st St. #201 Miami, FL 33137.

The Montana Department of Transportation, herein referred to as the "MDT", has approved the proposed City 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 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;

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:

A lighting design for federal-aid project STPE 5299(35), 10th St. Bridge Beautification-GTF, Control Number 4203, Office File 1180.6, located in Great Falls, Montana, on the Historic 10th Street Bridge spanning the Missouri River between River Drive N. and North River Rd.

This project will involve monument lighting design for the historic 10th Street Bridge. Further project description is given in Exhibit "E".

All referenced documents are current and updated as of the date of this Agreement. In addition, the Consultant from MDT's Community Transportation Enhancements Program Office may obtain copies of all manuals, guidelines, and other MDT documents. 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 and/or architectural profession currently practicing under similar circumstances.

SECTION 2 - GENERAL

The Consultant, in performance of all work called for under this Agreement, will furnish services for preliminary engineering and construction engineering, as outlined in Exhibit "E" to this Agreement. 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.

The Consultant will not assist the City in the advertisement and award of the construction contract.

SECTION 3 - PROJECT DEVELOPMENT AND DESIGN

To accomplish the scope of work in Exhibit "E", the Consultant will perform all necessary evaluations, analyses and designs, and prepare a project report.

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 work to be performed by the Consultant is detailed in Exhibit "E" to this Agreement.

SECTION 5 – REPORTS

- A. See Exhibit "E" for required reports.
- 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, such verbal approvals shall be confirmed in writing by the City 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 assume no liability for its accuracy or completeness.
- D. Furnish copies of the City's existing as-built construction and right-of-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 **Jim Rearden** for payment, submission of information, etc. All submittals will be made through **Robert Daniels**, 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, if requested by the City. 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

(This section not applicable to this Agreement.)

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. By mutual agreement, the Consultant will make reasonable efforts to perform the work in a timely manner.
- C. Except as provided below, all work as specified in Article I and, by reference, Exhibit "E" of this Agreement must be completed by **August 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 will submit the final design report to the City and MDT for review. The Consultant will make any revisions to the report 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 as a lump sum contract. 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, and shall only apply to work negotiated above and beyond that listed in Exhibit "E". However, the Consultant may make written request to the City to make revisions to the above rates. The City may approve revisions if they are reasonable and justified.

SECTION 2 – DEFINITIONS

A. Out-of-Pocket and Subcontract Costs

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.

Subcontractor charges directly related to the Project shall be reimbursed at cost. All subcontract costs shall require approval of the City.

B. Payment of Services

For all service performed by the Consultant under this Agreement and as full and complete compensation therefore, including all expenditures made and all expenses incurred by the Consultant in connection with this Agreement, the City agrees to pay the Consultant the **lump sum of \$9,000.00**, subject to and in conformity with all provisions of this Agreement.

All costs related to this project are to be in conformance with 48 CFR 31.2 of the Code of Federal Regulations.

C. Partial and Final Payments

Partial payments of the foregoing will be made at monthly (or greater) intervals as the work progresses, based upon certified invoices received, compatible with current practices and acceptable to the City. Payments on the fixed fee will be based upon the estimated percentage of completion of work.

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.

D. Consultant's Proposal & Cost Estimate

The attached Consultant's Proposal and Cost Estimate, 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 he 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 Art.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 \$1,000,000 (one million dollars) 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 CSA contains instructions for accessing the current Internet listing of MDT's certified DBE firms. Rebecca Johnson, MDT DBE Program Manager, will be contacted at (406) 444-7287 for possible use of a DBE firm, should subcontracting opportunities arise.

Each invoice submitted must state the established DBE goal for the project and the current and cumulative amounts expended to date towards that goal, unless the stated goal is 0%. For this project, the stated goal is 0%.

SECTION 12 - WORKER'S COMPENSATION COVERAGE

The Consultant agrees to provide proof that he has a policy for Worker's Compensation Insurance or proof that he has elected to be exempt from such coverage and his election has been approved by the Department of Labor and Industry. The Consultant agrees to maintain Worker's 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 report (see Art. I, Sec. 1), as the City will not make a detailed check of the report. The Consultant will stamp and sign the title sheet of the final report. 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.

As closely as possible, the final report will follow 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 Art. 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.

BRILLIANT LIGHTING DESIGN

CITY OF GREAT FALLS

BY: _____
Robert Daniels
Principal

BY: _____
John W. Lawton
City Manager

DATE: _____

DATE: _____

ATTEST _____
Peggy J. Bourne, City Clerk

(OFFICIAL SEAL)

APPROVED FOR LEGAL CONTENT

David V. Gliko
City Attorney

EXHIBIT "A"

CERTIFICATE OF CONSULTANT

I am a duly authorized representative of the firm of Brilliant Lighting Design, Inc., whose address is 750 NE 61st St. #201 Miami, FL 33137, 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

Robert Daniels, Principal

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"
NOTICE TO CONSULTANTS

During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (hereinafter 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 shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations, Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even though only State funding is here involved.
- (2) Nondiscrimination: The Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, any potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The Consultant will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City, MDT or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the City, MDT or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, City or MDT may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
 - (a) withholding 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 paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Consultant will take such action with respect to any subcontract or procurement as the City, MDT or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event Consultant is sued or is threatened with litigation by a subconsultant or supplier

as a result of such direction, the Consultant may request the City to enter into the litigation to protect the interests of the City or State, and, in addition, the Consultant or the City 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, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

- (1) Consultant will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) Consultant will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **"The Consultant will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Consultant. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Consultant."**
- (3) All video recordings produced and created under the Agreement will be closed-captioned.

D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR 26.

Each Agreement the City signs with a Consultant (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: **"The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant 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."**

EXHIBIT "D"

CONSULTANT COST PROPOSAL AND UNIT LABOR COSTS

UNIT LABOR COSTS

Hourly Rates for	Principals and Senior Lighting Designers	\$125/hour
Supplemental Services	Lighting Designers	\$105/hour
	Administrative and support staff	\$50/hour

COST ESTIMATE BY PHASE

Phase	Percentage of Total Fee	Phase Fee
Schematic Design and First Site Visit \$2,250	25%	
Design Development & Construction	35%	\$3,150
Documents, issuing of 99% Monument Lighting Report		
Construction Review Visit	20%	\$1,800
Final Aim & Adjustment	20%	\$1,800

Approved reimbursable expenses such as shipping, postage, messenger or courier service charges, purchase of supplies and materials beyond the agreed upon number of reports to be issued per this document are to be reimbursed at a rate of 1.0. Reimbursable expenses shall not include airline travel.

EXHIBIT "E"

DESCRIPTION OF WORK

Project Title

10th St. Bridge Beautification-GTF; STPE 5299(35); Control No. 4203; O.F. 1180.6

General Location

Historic 10th St. Bridge, Great Falls, Montana

General Project Description

Design of Exterior Decorative Façade lighting of the 10th Street Bridge, in Great Falls, Montana – to include both sides to Pier/arch lighting and possible lighting of Superstructure (roadway edge).

Services to be Provided

Architectural Lighting and Control Consulting Services for illumination include the follow services:

- A. Schematic Designs – Analysis of the Architectural Design and requirements for the project with regard to access, utility services and physical characteristics of the building. This will include the preliminary site visit to ascertain bridge characteristics and desired imagery from committee.
- B. Design Development (concept of lighting design) – Based on the City's approval of the Schematic Design, preparation of design details, selection of light fixtures and suggested methods of installation for future maintenance considerations. Submittal of Pre-Design Report
- C. Consultant will prepare Construction Documents required to illustrate the physical characteristics of the approved design concept needed for coordination purposes with the City's engineers for zoning and building code compliance in order to obtain the building permit. Submittal of 99% and 100% Monument Lighting Reports
- D. Review of shop drawing submittals, inclusive of equipment specifications and cut sheets for installation purposes. The submittal review process will assure that the design intent is achieved.
- E. Site Visit to inspect construction. This will include location of fixtures and methods of installation.
- F. Aiming of Fixtures-This would be a final site visit after all fixtures are installed. Fixtures would be aimed and adjusted as necessary to yield the optimum effect.
- G. Equipment Specifications and lamping requirements will be prepared for coordination with existing A/E team.
- H. Marked-up Drawings, as required, to communicate the design intent and to allow the Project Electrical Engineer to incorporate information into their Construction Documents.
- I. Telephone Conferencing & e-mail messaging to confer on decisions
- J. Coordination with Project Manager & Project Electrical Engineer

Surveys

No survey work will be required for this contract.

Environmental Data

No environmental data will be required for this contract. Environmental documentation, including historic impact, will be prepared/assembled by the City.

Coordination

- A. The City will be responsible for the coordination of the various consultants impacted by the proposed lighting design and documents. The City also shall provide complete information regarding requirements, interrelationships of project components and special considerations for installation, site requirements budget limitations and other pertinent data related to the scope of this proposal.
- B. The City is responsible for collecting all recommendations and inputs from: City, Preservation Cascade, MDT and Montana State Historic Preservation Office (SHPO)
- C. The City shall provide Consultant with Secretary of Interior's "Guidelines for Rehabilitation of Historic Structures", if and when appropriate.
- D. The Consultant's design shall not include nor replace the current architectural/engineering documents or services currently provided by the Architect & Engineer of Record, on this project. Proposed design recommendations and documents are only for use and coordination by the Owner with Architect, Engineer, or Contractor to be incorporated into their designs as appropriate.
- E. No Guarantees with respect with Energy code compliance can be made due to the limited scope of work that the Consultant will provide. Code Compliance is not a responsibility of the Consultant.
- F. The Consultant will structure his report so as to allow the Engineering Consultant to design the electrical supply and prepare bidding documents.

Construction Documents (deliverables)

- A. Pre-Design Report – Resulting from the Design Development Phase, this shall include:
 - a) fixture/ lamp types, location and means of maintenance
 - b) Cost Estimates of Initial Project Cost and Maintenance/ Operation Cost
- B. Monument Lighting Report (99%)- 4 sets of the draft, to include:
 - a) Fixture & Lamp Schedule
 - b) Product Specifications (including cut sheets for approved fixtures)
 - c) Schematic and Design Development documents required to communicate design intent, (locations and mounting details)
 - d) Cost estimates- Best effort will be made to ascertain parts and labor cost
- C. Monument Lighting Report (100%) -The consultant will incorporate comments and corrections made by the City, County and State into this final report. Consultant will issue 6 sets of this final edition.
- D. City of Great Falls is responsible for proper distribution of Reports to the appropriate parties of authorization

Additional Work

If authorized by the City, the Consultant will provide additional services. These services will be performed for additional fees not included in this proposal. Additional services may include but are not limited to:

- Value Engineering or redesign of additional lighting systems already approved for construction that is not included in the scope of the work outlined in this proposal.
- Additional assistance in connection with construction administration, beyond the time needed to complete the scope defined in this proposal.
- Evaluations of alternate fixture submittals and on- site demonstration as required to properly

addressing the design intent.

- Detailed engineering documents of control systems.
- Startup and programming of control systems.
- Lamp stocking and maintenance recommendations.
- Testimony or technical support for any public hearing or legal process involving the project.