

CITY PROJECT PR07-02LF

Landscape Architecture Services Agreement

For

The Park at LaFray Lane

Missoula Montana



**CITY OF MISSOULA
MISSOULA, MONTANA**

**AGREEMENT FOR
PROFESSIONAL LANDSCAPE ARCHITECTURE SERVICES
FOR
PROJECT PR07-02LF**

This Agreement made and entered into this _____ day of _____, 2007, in the City of Missoula, County of Missoula, State of Montana, by and between the City of Missoula, a municipal organization under the law of the State of Montana, hereinafter referred to as "OWNER" and CTA Architects Engineers, 306 West Railroad Avenue, Suite 104, Missoula, MT 59802 hereinafter referred to as the "CONSULTANT."

WHEREAS, the OWNER desires to engage the CONSULTANT to render professional services related to the project formation, design, construction contract observation, administration, and final period services for the above described project; and

WHEREAS, the OWNER has complied with State procurement requirements regarding the selection of a professional CONSULTANT; and

WHEREAS, the OWNER desires to enter into an agreement with the CONSULTANT as hereinafter provided, for the professional landscape architecture design, construction observation and administration of the project;

NOW THEREFORE, for and in consideration of the mutual promises and agreements set forth herein, the OWNER and CONSULTANT mutually stipulate and agree to the following provisions:

I. Employment of CONSULTANT

The OWNER hereby agrees to retain the professional services of the CONSULTANT pursuant to the terms and provisions of this Agreement, and the CONSULTANT agrees to perform the professional services identified pursuant to the terms and provisions of this Agreement in a competent, professional, and acceptable manner.

II. Independent Landscape Architecture Contractor

It is understood by the parties hereto that the CONSULTANT is an independent landscape architecture contractor and that neither its principals nor its employees are employees of the OWNER for purposes of tax, retirement system, or social security (FICA) withholding. It is further understood that pursuant to Section 39-71-401, MCA, the CONSULTANT has obtained and will maintain at its expense for the duration of this Contract, coverage in a Workers' Compensation insurance program with either the State of Montana, a private insurance carrier, or an approved self-insurance plan in accordance with Montana State law for its principals and employees for the services to be performed hereunder and that the OWNER has no liability for vendor's workers' compensation insurance of claims. The CONSULTANT shall provide evidence of such coverage to the City Clerk prior to the City Clerk's validation of this Agreement.

III. Contract Pricing

LANDSCAPE ARCHITECTURAL services for the project formation and design period services shall be on a “not to exceed” fee as the basis for compensation for a fixed scope of services.

LANDSCAPE ARCHITECTURAL services for the project advertisement, bidding, construction and final period of services shall be at cost plus a negotiated fixed fee as the basis for compensation for a fixed scope of services. CONSULTANT’s current overhead factor is shown in Attachment B.

Cost plus a fixed percentage or a fixed percentage of construction shall not be used in this contract.

IV. Pre-construction Conference

A pre-construction meeting will be scheduled before construction begins on any designed portions of this project. The CONSULTANT will be required to attend this meeting. The date and time of this meeting will be set at a later date.

V. Liaison

The OWNER's designated liaison with the CONSULTANT is David Shaw, Missoula Parks & Recreation. The CONSULTANT's designated liaison with the OWNER is Kent Bray, CTA Architects Engineers.

VI. Effective Date and Time of Performance

This Agreement takes effect as of the date entered into listed above. The project design services performed by the CONSULTANT will be completed no later than May 14, 2007. CONSULTANT will complete bid documents no later than May 14, 2007.

VII. Scope and Fees of Professional Services

- A. The CONSULTANT shall conform to the requirements of 18-2-121 and 18-2-122 MCA and all other codes of the State of Montana applicable to providing professional landscape architecture services.
- B. The CONSULTANT agrees to perform professional services in connection with the project and will serve as the OWNER's representative in those phases of the project to which this agreement applies.
- C. The CONSULTANT shall not be responsible or liable for project safety, efficiency and/or adequacy of the Owner's Contractor's plant, appliances, and methods, or for any damage or injuries which may result from their failure and/or improper construction, maintenance or operations. This indemnification includes damage to public and/or private property or improvements and/or injuries to any employees of the Owner, the Contractors and/or the general public that may be caused or contributed to by the activities related to the Owner's project.

Project safety shall be the sole responsibility of the Owner's Contractor, the Contractor's construction superintendents, designated safety officers, or a project safety officer designated and employed by the Owner.

- D. Project formation and design period services to be provided by the CONSULTANT shall be as stated in Attachment C, CTA Scope of Services.
- E. Construction period services shall be as stated in Attachment C, CTA Scope of Services.
- F. Extra services of the CONSULTANT when authorized by the OWNER shall be as follows:

Additional services authorized by OWNER in writing, which are not part of the Basic Services.

VIII. Payment for Services

- A. Project Formation and Design Services:

The OWNER shall pay the CONSULTANT a fee not to exceed \$ 26,860.00 for services listed in Attachment B. Monthly payment for services will be based on actual work performed and actual costs incurred.

The cost of project formation and design services are summarized on Attachment B and by this reference made a part of this Agreement.

- B. Construction and Final Period Services:

The OWNER shall pay the CONSULTANT their project cost plus a fixed fee for services listed in Items. Monthly payment for services will be based on actual work performed and actual costs incurred. Payment requests by the CONSULTANT must be accompanied by a written narrative report which adequately describes and documents the work performed during that period relative to the adopted Implementation Schedule (Attachment B) for the project.

The estimated costs of project construction management and final period services are also summarized on Attachment B.

- C. Payment for extra services shall be as follows:

Payment for extra services authorized by the OWNER shall be paid for per the CONSULTANT's current direct labor cost and overhead factor in Attachment B plus 15% profit and risk. The OWNER shall pay the CONSULTANT monthly for extra services.

- IX. The OWNER agrees to provide the CONSULTANT with all available information pertinent to the project and to perform the following services:

- A. Give thorough consideration to all reports, estimates, drawings, specifications, proposals, change orders, payment claims, and other documents presented by the CONSULTANT and shall inform the CONSULTANT of all decisions within a reasonable time.
- B. Hold all required special meetings, serve all required public and private notices, receive and act upon all protests and requirements in the development of the Project and pay all costs incident thereto.
- C. Advertise for construction proposals and construction bond proposals from Bidders, open proposals at the appointed time and place and pay all costs incident thereto.
- D. Furnish legal, accounting, bonding and insurance counseling services as required for the project.
- E. Furnish the CONSULTANT with a copy of any design and construction standards he shall require the CONSULTANT to follow in the preparation of Contract Documents.

X. The OWNER and the CONSULTANT further agree to the following conditions:

A. Conflict of Interest

The CONSULTANT covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the project which would conflict in any manner or degree with the performance of its services hereunder. The CONSULTANT further covenants that, in performing this Agreement, it will employ no person who has any such interest.

B. Modification and Waiver

This Agreement may not be modified, altered, or changed except pursuant to a written agreement signed by the parties hereto. A waiver of any term or condition of this Agreement or of any breach of this Agreement shall not be deemed a waiver of any other term or condition of this Agreement or any part hereof or of any later breach of the Agreement. Any waiver must be in writing.

C. Termination of Agreement

Termination for Cause

- a. If, at any time before the date of completion, one of the parties determines that the other party has failed to comply with any of the terms and conditions of this Agreement, the aggrieved party may give notice, in writing, to the defaulting party of any deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If the defaulting party fails to cure and correct all defaults claimed within a reasonable period to be

specified in the notice, the aggrieved may, with no further notice, declare this Agreement to be terminated in whole or in part.

- b. If the CONSULTANT is the defaulting party, it will thereafter be entitled to receive payment for those services satisfactorily performed to the date of termination less the amount of reasonable damages suffered by the OWNER by reason of the CONSULTANT's failure to comply with the Agreement's terms and conditions.
- c. If the OWNER is the defaulting party it will pay the CONSULTANT for those services satisfactorily performed to the date of the termination plus the amount of reasonable damages suffered by the CONSULTANT by reason of the OWNER's failure to comply with the Agreement's terms and conditions.

D. Non-Discrimination

The CONSULTANT agrees that any and all hiring by them related to this Agreement shall be on the basis of merit and qualifications and there shall be no discrimination on the basis of race, color, religious creed, political ideas, gender, age, marital status, physical or mental handicap, national origin or ancestry, by persons performing this Agreement.

Qualifications mean such abilities as are genuinely related to competent performance of the particular occupational task.

E. Ownership and Publication of Materials

All reports, information, data and other materials prepared by the CONSULTANT pursuant to this Agreement are the property of the OWNER, the Montana Department of Commerce and the Department of Natural Resources which have the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating hereto. Any reuse without written verification or adaptation by the CONSULTANT for the specific purpose intended will be at the OWNER's sole risk and without liability or legal exposure to the CONSULTANT. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written approval of the OWNER and the above departments.

F. Reports and Information

The CONSULTANT will maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the OWNER to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the OWNER and its authorized representative, and will be retained for three years after receipt of final payment for the services rendered under this Agreement unless permission to destroy them is granted by the OWNER.

G. Access to Records

It is expressly understood that the CONSULTANT's records relating to this Agreement will be available during normal business hours for inspection by the OWNER.

H. Construction and Venue

This Agreement will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is the Fourth Judicial District in and for the County of Missoula, State of Montana.

I. Eligibility

CONSULTANT certifies that the CONSULTANT's firm and the firms' principals are not debarred, suspended, voluntarily excluded, or other wise ineligible for participation in federally assigned contracts under Executive Order 12549, "Debarment and Suspension." (24 CFS 24.505)

J. Affirmative Action Policy

Contractors, subcontractors, subgrantees, and other firms doing business with the OWNER or any agency connected with the OWNER must be in compliance with the City of Missoula's Affirmative Action Plan and Title 49, M.C.A., or forfeit the right to continue such business dealings. See Attachment A.

K. Insurance

CONSULTANT hereby certifies that it has and shall maintain during the time period of this Agreement, commercial general liability insurance for bodily injury and property damage in the minimum amount of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate that includes liability for accidents occurring during delivery or at the delivery sites that are attributable to the CONSULTANT or its agents' conduct. Such insurance shall be project specific and name the City of Missoula and its officials and employees as additionally named insured.

CONSULTANT shall maintain, during the term of this contract, Professional Errors and Omissions Insurance in the minimum amount of \$1,000,000.00.

OWNER agrees that Construction Contractor will be required to name CONSULTANT and CONSULTANT's consultants as Additional Named Insured under Commercial General Liability, Automobile Liability, Excess and/or Umbrella policies required for the construction contract.

L. Previous Agreements

This Agreement constitutes the entire understanding of the parties and is intended as a final expression of their agreement and a complete statement of the terms thereof. There are no

promises, terms, conditions, or obligations, other than contained herein. This Agreement shall supersede all previous communications, representations, or agreements, either oral or written, between the parties.

M. Notices

Any and all notices to the OWNER or the CONSULTANT shall be sent to:

City of Missoula
Attn: David Shaw
600 Cregg Lane
Missoula, MT 59801

CTA Architects Engineers
Attn: Kent Bray
306 West Railroad Avenue, Suite 104
Missoula, MT 59802

N. Binding Effect

This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the OWNER and the CONSULTANT respectively and his partners, successors, assigns and legal representatives. Neither the OWNER nor the CONSULTANT shall have the right to assign, transfer or sublet his interest or obligations hereunder without written consent of the other party.

O. Service Rates

The service costs and hourly fee schedules contained in this Agreement are based on the CONSULTANT's current service rates as outlined on Attachment C.

P. Indemnification

The CONSULTANT shall indemnify and hold the OWNER and their officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this Agreement; provided that nothing herein shall require the CONSULTANT to indemnify the OWNER against and hold harmless the OWNER from claims, demands or suits based solely upon the conduct of the OWNER, their agents, officers and employees and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the OWNER, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence, (2) the costs to the OWNER of defending such claims and suits, etc., shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

Q. Severability

If any provision or part of this Agreement is declared invalid by a court, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in

one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year in this certificate first hereinabove written.

CONSULTANT:

Name: CTA Architecs Engineers
Address: 306 West Railroad Avenue, Suite 104, Missoula, MT 59802

_____, Date: _____
_____, President

_____, Date: _____
_____, Vice-President

OWNER: CITY OF MISSOULA
435 Ryman Street
Missoula, Montana 59802

_____, Date: _____
John Engen, Mayor

_____, Date: _____
Martha L. Rehbein, City Clerk

Approved as to form and content.

_____, Date: _____
Jim Nugent, City Attorney

ATTACHMENT A

NON-DISCRIMINATION All hiring shall be on the basis of merit and qualifications and there shall be no discrimination on the basis of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin or ancestry, by persons performing this contract. Qualifications mean such abilities as are genuinely related to competent performance of the particular occupational task.

AFFIRMATIVE ACTION POLICY Contractors, subcontractors, subgrantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Code Annotated entitled "Human Rights" or forfeit the right to continue such business dealings.

The City's Affirmative Action Policy Statement is:

The Mayor of the City of Missoula is committed to implement affirmative action to provide all persons equal opportunity for employment without regard to race, color, religion, national origin, age, marital status, ancestry, receipt of public assistance, political beliefs, physical or mental handicap, ex-offender status, or sex. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility of actively facilitating equal opportunity for present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all personnel actions are administered on the basis of job necessity.

Specific responsibility for development, implementation, monitoring and reporting will be assigned to the City Personnel staff under the supervision of the Mayor's Administrative Assistant.

It is the policy of the City of Missoula to take affirmative action to eliminate discrimination in personnel policies and procedures that have adverse impact on the "affected class" unless sex, ex-offenders status, and/or physical or mental handicap relates to a bona fide occupational qualification. Equal opportunities shall be provided for all City employees during their terms of employment. All applicants for City employment shall be recruited from the available labor market, and employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, C.E.T.A. program participants, trainees and applicants.

CTA Missoula
306 West Railroad Ave. Suite 104
Missoula, Montana 59802
P: 728-8522
F: 728-8287

Attachment C

CTA Scope of Services

February 13, 2007

Donna Gaukler
Director of Parks and Recreation for the City of Missoula
600 Cregg Lane
Missoula, Montana 59802-4297

Re: Landscape Architectural Services, City Project 06-012 (L), Lafray Park: Master Plan, Design Development, Construction Documents, Bid Documents, Project Manual, Bid Assistance, and Construction Management for Lafray Park, City of Missoula, Montana.

Dear Donna:

CTA looks forward to working with you during design development for this dynamic multi-use outdoor facility. This letter is to confirm our sincere interest to establish an agreement for a formal contract between CTA Architects Engineers hereinafter referred to as CTA and the City of Missoula Parks and Recreation hereinafter referred to as Owner.

Scope of Services

CTA will follow a thorough and pragmatic process to complete Design Development, Construction Document and Bid level drawings and Specifications and Construction Administration.

Understandings

1. The Owner will be responsible for any public meetings or internal governmental agency coordination including but not limited to City Council meetings, departmental meetings, neighborhood meetings etc.
2. The Owner will provide CTA with a site survey and any additional surveying that might be determined as necessary to continue design or construction work.
3. CTA is not responsible for any work, designs or recommendations produced by PBS&J in their contract, see Attachment D, with the Owner regarding water and hydraulic issues relating to the Lafray Park site. CTA will coordinate with PBS&J and their deliverables as appropriate to complete CTA's scope of services.
4. The Owner will be responsible for providing CTA with any design details for products and elements that are used as a typical element by the Owner.

5. The Owner will be responsible for securing, performing and supplying to CTA any soil testing either for nutrient content or for other geotechnical needs.
6. The following items/components that are to be included in Lafray Park will be specified as pre-manufactured elements (or as a series of connected elements):
 - Restroom facilities
 - Pavilion(s)/Shelter(s)
 - All site furnishings
 - Lighting poles, fixtures and lamps
 - Others as requested by Owner during the design process
- 6.1 The following items/components to be included in Lafray Park will be performance specified by CTA with the final design for each component to be completed directly by the chosen manufacturer. CTA at the direction of the Owner will review the designs done by the manufactures for layout and spatial relationships to the park as a whole; however the liability of the specific design for the following items will remain with the manufacture.
 - All playground equipment including the climbing wall.
 - Skate park facility and components
 - Others as requested by Owner during the design process that might pose a risk similar to playgrounds and skate park components.

CTA will strive to specify pre-manufactured products to meet the desired results of the Owner. In the event that available pre-manufactured options do not meet the Owners needs or desires and if custom designing is needed or requested to fill the desires of the Owner, the custom design effort will not be considered within this scope of work and will be negotiated as a change order within this agreement or as a separate and independent contract for services.

7. Lafray Park will be built in two phases. CTA will produce CDs up to 100% Bid for both phases of construction. CTA will conduct construction management for Phase I only as part of this contract
8. We anticipate Parks and Recreation staff taking at least five to six working days, eight calendar days per design review.
9. Attachment B named CTA Fee Schedule is to be considered a part of this agreement.

Design Process

Because the Lafray Park site plan has already been approved CTA anticipates being able to briefly touch on the Master Plan and move immediately into Design Development and Construction Documents.

Outlined below is the process specific to each phase specific to Lafray Park:

Site Plan Development

At this stage we anticipate the following:

- Based on the kick-off and on-site meetings CTA will produce an updated master plan. This master plan will consist of one black and white plan sketch that will include all the anticipated changes and the phases clearly delineated.
- CTA will produce an updated Opinion of Probable Cost.
- CTA will e-mail the sketch to Park and Recreation Staff as an Adobe PDF document for review and comment.
- Review by the Owner of the Master Plan.

Design Development

CTA will produce 30% construction document level drawings (to be called Design Development) upon receiving the master plan review comments from the Owner.

- When complete CTA and the Owner will meet in person to present and discuss the 30% design one on one.
- Three review sets (1/2 size documents) of the 30% Design Development drawings will be left with the Owner for review.
- An updated Opinion of Probable Cost will not be produced at this submittal.
- Review by the Owner of the 30% construction documents.

Construction Documents

Three stages of Construction Documentation are expected 80%, 100% and Bid:

- CTA will produce three Construction Document Sets (1/2 size documents) to the 80% level based on the comments provided by the Owner at the 30% level.
- Review by the Owner of the 80% construction documents.
- CTA will produce three Construction Document Sets (full size documents) to the 100% level based on the comments provided by the Owner at the 80% level.
- CTA will produce the 100% Project Manual
- The Owner will provide to CTA any items or documentation to be included in the Project Manual that CTA may not have readily at its disposal but are available to the Owner or items and information or forms that are required by the Owner.

- Review by the Owner of the 100% construction documents. This will be considered the **final** review by the Owner.
- CTA will produce five Construction Document Sets including the Project Manual, to the Final Bid level based on the comments provided by the Owner at the 100% level.

Bidding and Award

At Parks and Recreation's direction CTA will produce the bid sets needed for the contractors and provide one set to the local bid exchange.

- CTA will print and make available to contractors via open bid, the Bid Documents and the Project Manual.
- CTA will assist the Owner by being available during the Pre-Bid contractors meeting to help answer any contractor questions.
- CTA will produce any addendums that might be needed in the Bid Construction Documents before the bidding process is closed.
- CTA will assist the Owner in advising on which contractor(s) to award the construction contract.
- The Owner will pay for project advertising during this phase.

Construction Management

At the Owner's direction CTA will provide oversight of construction.

- CTA will attend the Owner managed pre-construction meeting with the chosen contractor.
- CTA will conduct weekly site visits and produce one field report per visit and provide this report to the Owner. It is anticipated that there will be no more than twelve total site visits and field reports. CTA will issue Change Order requests as needed for unforeseen items.
- Near completion CTA will conduct a thorough on-site inspection and produce one punch list of outstanding items that need to be completed before issuing a statement of substantial completion to the contractor.
- Once outstanding items are completed by the contractor CTA will conduct one final walkthrough with the anticipation of being able to issue a substantial completion report. If not complete after 22 total regular site visits any further construction management assistance by CTA will be considered outside this scope of services.

- A punch list is to be completed and reviewed before issuance of Substantial Completion. If there is work that is not complete after the substantial completion report, CTA will issue a request to complete the work within the construction contract.
- CTA will create a set of reproducible as-builts based upon what was actually installed. The Owner is responsible for procuring a surveyor to assist in the as-built effort.
- CTA will conduct a warranty walkthrough one year from date of substantial completion then closeout the project.
- CTA will be the primary contact with the contractor and the contractor will participate in the weekly site visits.
- CTA will be responsible for obtaining any permits necessary for construction if applicable for Phase I.

Percentage of Completeness and Deliverables

The anticipated level of completeness as they are associated with deliverables is included in the attached Attachment B.

Compensation

Compensation will be billed as time and materials not to exceed a total project maximum of \$26,860.00. Payments for each phase of service will be issued to a maximum amount for each phase as shown in Attachment B.

A breakdown of costs and an estimated payment schedule is included in the attached Attachment B.

Payments to CTA shall be made no later than thirty (30) days after receipt of invoice. To uphold the 30 day turnaround, invoices must be submitted to the Owner on Thursday's by noon. Outstanding invoices are subject to finance charges of 1.5%. All expenses such as travel expenses, inordinate amount of long distance calls, photography, outside consultant, postage, Federal Express and courier service will be billed at direct cost plus five (5) percent unless the client pays direct to the supplier. All travel expenses and outside consultant fees must be approved by the Owner in writing (e-mail approval will suffice) before they take place. All other services not itemized above, including any design revisions beyond what has been approved, or any extra services you may request, will be billed at our standard hourly rates listed below:

Senior Engineer	\$125/hour
Junior Engineer	\$ 75/hour
Senior Planner/ Landscape Architect	\$125/hour
Junior Planner/ Landscape Architect	\$ 75/hour
Graduate Landscape Architect/Designer	\$ 65/hour

All fees quoted in this proposal shall remain in effect for a period of one (1) year from the date hereof. Any extension beyond one (1) year without contract execution or written extension may warrant renegotiations of this fee structure.

2 of 3

ATTACHMENT D

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

FOR

LAFRAY LANE PARK DEVELOPMENT PROJECT

Parks Department Project # 06-10-LaFray

This Agreement made and entered into this 16 day of November, 2006, in the City of Missoula, County of Missoula, State of Montana, by and between the City of Missoula, a municipal organization under the law of the State of Montana, hereinafter referred to as "OWNER" and Post, Buckley, Schuh, & Jernigan, Inc. (PBS&J), hereinafter referred to as "ENGINEER."

WHEREAS, the OWNER desires to engage the ENGINEER to render professional services related to the project formation, design, construction contract observation, administration, and final period services for the above described project; and

WHEREAS, the OWNER has complied with State procurement requirements regarding the selection of a professional ENGINEER; and

WHEREAS, the OWNER desires to enter into an agreement with the ENGINEER as hereinafter provided, for the professional engineering design, construction observation and administration of the project;

NOW THEREFORE, for and in consideration of the mutual promises and agreements set forth herein, the OWNER and ENGINEER mutually stipulate and agree to the following provisions:

I. Employment of ENGINEER

The OWNER hereby agrees to retain the professional services of the ENGINEER pursuant to the terms and provisions of this Agreement, and the ENGINEER agrees to perform the professional services identified pursuant to the terms and provisions of this Agreement in a competent, professional, and acceptable manner.

II. Independent Engineering Contractor

It is understood by the parties hereto that the ENGINEER is an independent engineering contractor and that neither its principals nor its employees are employees of the OWNER for purposes of tax, retirement system, or social security (FICA) withholding. It is further understood that pursuant to Section 39-71-401, MCA, the ENGINEER has obtained and will maintain at its expense for the duration of this Contract, coverage in a Workers' Compensation insurance program with either the State of Montana, a private insurance carrier, or an approved self-insurance plan in accordance with Montana State law for its principals and employees for the services to be performed hereunder and that the OWNER has no liability for vendor's workers' compensation insurance of claims. The ENGINEER shall provide evidence of such coverage to the City Clerk prior to the City Clerk's validation of this Agreement.

III. Contract Pricing

ENGINEERING services for the project formation and design period services shall be on a "cost not to exceed" as the basis for compensation for a fixed scope of services.

Cost plus a fixed percentage or a fixed percentage of construction shall not be used in this contract.

IV. Pre-construction Conference

A pre-construction meeting will be scheduled before construction begins on any designed portions of this project. The ENGINEER will be required to attend this meeting. The date and time of this meeting will be set at a later date.

V. Liaison

The OWNER's designated liaison with the ENGINEER is Dave Shaw. The ENGINEER's designated liaison with the OWNER is Karl Uhlig.

VI. Effective Date and Time of Performance

This Agreement takes effect as of the date entered into listed above. The project design services performed by the ENGINEER will be completed no later than **March 1st 2007**.

VII. Scope and Fees of Professional Services

- A. The ENGINEER shall conform to the requirements of 18-2-121 and 18-2-122 MCA and all other codes of the State of Montana applicable to providing professional engineering services.
- B. The ENGINEER agrees to perform professional services in connection with the project and will serve as the OWNER's representative in those phases of the project to which this agreement applies.
- C. The Engineer shall not be responsible or liable for project safety, efficiency and/or adequacy of the Owner's Contractor's plant, appliances, and methods, or for any damage or injuries which may result from their failure and/or improper construction, maintenance or operations. This indemnification includes damage to public and/or private property or improvements and/or injuries to any employees of the Owner, the Contractors and/or the general public that may be caused or contributed to by the activities related to the Owner's project.

Project safety shall be the sole responsibility of the Owner's Contractor, the Contractor's construction superintendents, designated safety officers, or a project safety officer designated and employed by the Owner.

D. Project formation and design period services to be provided by the ENGINEER shall be as described in Post, Buckley, Schuh, & Jernigan, Inc (PBS&J) letter dated October 26, 2006, to David Shaw, Missoula Parks & Recreation Department (Attachment C), plus additional design services for "stamped trail crossings" which together shall constitute the Basic Services.

E. Construction period services shall be as follows:

NONE

F. Extra services of the ENGINEER when authorized by the OWNER shall be as follows:

Additional services authorized by OWNER which are not part of the Basic Services.

VIII. Payment for Services

A. Project Formation and Design Services:

The OWNER shall pay the ENGINEER a fee not to exceed \$4,400 for services listed in Tasks 1 through 4 in Attachment C plus a fee not to exceed \$3,200 for design services for "stamped irrigation ditch crossings" for a total amount not to exceed \$7,600 as stated in Attachment C. Monthly payment for services will be based on actual work performed and actual costs incurred.

B. Payment for extra services shall be as follows:

Payment for extra services authorized by the OWNER shall be paid for per the ENGINEER's current direct labor cost and overhead factor in Attachment B plus 15% profit and risk. The OWNER shall pay the ENGINEER monthly for extra services.

IX. The OWNER agrees to provide ENGINEER with all available information pertinent to the project and to perform the following services:

- A. Give thorough consideration to all reports, estimates, drawings, specifications, proposals, change orders, payment claims, and other documents presented by the ENGINEER and shall inform the ENGINEER of all decisions within a reasonable time.
- B. Hold all required special meetings, serve all required public and private notices, receive and act upon all protests and requirements in the development of the Project and pay all costs incident thereto.
- C. Advertise for construction proposals and construction bond proposals from Bidders, open proposals at the appointed time and place and pay all costs incident thereto.
- D. Furnish legal, accounting, bonding and insurance counseling services as required for the project.

- E. Furnish the ENGINEER with a copy of any design and construction standards he shall require the ENGINEER to follow in the preparation of Contract Documents.

X. The OWNER and the ENGINEER further agree to the following conditions:

A. Conflict of Interest

The ENGINEER covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the project which would conflict in any manner or degree with the performance of its services hereunder. The ENGINEER further covenants that, in performing this Agreement, it will employ no person who has any such interest.

B. Modification and Waiver

This Agreement may not be modified, altered, or changed except pursuant to a written agreement signed by the parties hereto. A waiver of any term or condition of this Agreement or of any breach of this Agreement shall not be deemed a waiver of any other term or condition of this Agreement or any part hereof or of any later breach of the Agreement. Any waiver must be in writing.

C. Termination of Agreement

This Agreement may be terminated as follows:

1. ~~Termination due to loss of funding. This Agreement will terminate, in whole or in part, at the discretion of the Owner in the event that the Owner reduces or terminates payments under the Federal Aid Funding Program so as to prevent the Owner from paying the Engineer with federal aid funds. In this event, the Owner will give the Engineer advance written notice which sets forth the effective date of the termination and explain that the termination is due to a loss or reduction of the Federal Aid Funding Program Grants.~~
2. Termination for Cause
 - a. If, at any time before the date of completion, one of the parties determines that the other party has failed to comply with any of the terms and conditions of this Agreement, the aggrieved party may give notice, in writing, to the defaulting party of any deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If the defaulting party fails to cure and correct all defaults claimed within a reasonable period to be specified in the notice, the aggrieved may, with no further notice, declare this Agreement to be terminated in whole or in part.
 - b. If the ENGINEER is the defaulting party, it will thereafter be entitled to receive payment for those services satisfactorily performed to the date of

termination less the amount of reasonable damages suffered by the OWNER by reason of the ENGINEER's failure to comply with the Agreement's terms and conditions.

- c. If the OWNER is the defaulting party it will pay the ENGINEER for those services satisfactorily performed to the date of the termination plus the amount of reasonable damages suffered by the ENGINEER by reason of the OWNER's failure to comply with the Agreement's terms and conditions.
- d. Notwithstanding the above, the defaulting party is not relieved of liability to the aggrieved party for damages sustained by the aggrieved party by virtue of any breach of this Agreement.
- e. If the ENGINEER is the defaulting party, the OWNER may withhold any payments to the Contractor for purposes of setoff until the exact amount of damages due the OWNER from ENGINEER is determined.

D. Non-Discrimination

The ENGINEER agrees that any and all hiring by them related to this Agreement shall be on the basis of merit and qualifications and there shall be no discrimination on the basis of race, color, religious creed, political ideas, gender, age, marital status, physical or mental handicap, national origin or ancestry, by persons performing this Agreement. Qualifications mean such abilities as are genuinely related to competent performance of the particular occupational task.

E. Ownership and Publication of Materials

All reports, information, data and other materials prepared by the ENGINEER pursuant to this Agreement are the property of the OWNER, the Montana Department of Commerce and the Department of Natural Resources which have the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating hereto. Any reuse without written verification or adaptation by the ENGINEER for the specific purpose intended will be at the OWNER's sole risk and without liability or legal exposure to the ENGINEER. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written approval of the OWNER and the above departments.

F. Reports and Information

The ENGINEER will maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the OWNER to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the OWNER and its authorized representative, and

will be retained for three years after receipt of final payment for the services rendered under this Agreement unless permission to destroy them is granted by the OWNER.

G. Access to Records

It is expressly understood that the ENGINEER's records relating to this Agreement will be available during normal business hours for inspection by the OWNER

H. Construction and Venue

This Agreement will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is the Fourth Judicial District in and for the County of Missoula, State of Montana.

I. Eligibility

ENGINEER certifies that the ENGINEER's firm and the firms' principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible for participation in federally assigned contracts under Executive Order 12549, "Debarment and Suspension." (24 CFS 24.505)

J. Affirmative Action Policy

Contractors, subcontractors, subgrantees, and other firms doing business with the OWNER or any agency connected with the OWNER must be in compliance with the City of Missoula's Affirmative Action Plan and Title 49, M.C.A., or forfeit the right to continue such business dealings. See Attachment A.

K. Insurance

ENGINEER hereby certifies that it has and shall maintain during the time period of this Agreement, liability insurance in the minimum amount of \$750,000 per occurrence that includes liability for accidents occurring during delivery or at the delivery sites that are attributable to the ENGINEER or its agents' conduct.

ENGINEER shall maintain, during the term of this contract, Professional Errors and Omissions Insurance in the minimum amount of \$1,500,000.00

OWNER agrees that Construction Contractor will be required to name ENGINEER and Engineer's consultants as Additional Named Insured under Commercial General Liability, Automobile Liability, Excess and/or Umbrella policies required for the construction contract.

L. Previous Agreements

This Agreement constitutes the entire understanding of the parties and is intended as a final expression of their agreement and a complete statement of the terms thereof. There are no promises, terms, conditions, or obligations, other than contained herein. This Agreement shall supersede all previous communications, representations, or agreements, either oral or written, between the parties.

M. Notices

Any and all notices to the OWNER shall be sent to:

**City of Missoula Parks & Recreation
Attn: Dave Shaw
600 Cregg Lane
Missoula, MT 59801**

N. Binding Effect

This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the OWNER and the ENGINEER respectively and his partners, successors, assigns and legal representatives. Neither the OWNER nor the ENGINEER shall have the right to assign, transfer or sublet his interest or obligations hereunder without written consent of the other party.

O. Service Rates

The service costs and hourly fee schedules contained in this Agreement are based on the ENGINEER's current service rates as outlined on Attachment B.

P. Indemnification

The ENGINEER shall indemnify and hold the OWNER and their officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the ENGINEER's negligence or breach of any of its obligations under this Agreement; provided that nothing herein shall require the ENGINEER to indemnify the OWNER against and hold harmless the OWNER from claims, demands or suits based solely upon the conduct of the OWNER, their agents, officers and employees and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the ENGINEER's agents or employees and (b) the OWNER, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence, (2) the costs to the OWNER of defending such claims and suits, etc., shall be valid and enforceable only to the extent of the ENGINEER's negligence or the negligence of the ENGINEER's agents or employees.

Q. Severability

If a part of this Agreement is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year in this certificate first hereinabove written.

ENGINEER: Name: Post, Buckley, Schuh, & Jernigan Inc. (PBS&J)
Address: 1120 Cedar St. Missoula, MT 59802

[Signature] Date: 10/31/06
Bruce Anderson, President Sr. Water Resources Program Managers

_____, Vice-President
Date: _____

OWNER: CITY OF MISSOULA
435 Ryman Street
Missoula, Montana 59802

[Signature] Date: 11/2/06
John Engen, Mayor

[Signature] Date: 11/16/06
Martha L. Rehbein, City Clerk



Approved as to content and form

[Signature] Date: 11/1/2006
Jim Nugent, City Attorney

ATTACHMENT A

NON-DISCRIMINATION All hiring shall be on the basis of merit and qualifications and there shall be no discrimination on the basis of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin or ancestry, by persons performing this contract. Qualifications mean such abilities as are genuinely related to competent performance of the particular occupational task.

AFFIRMATIVE ACTION POLICY Contractors, subcontractors, subgrantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Code Annotated entitled "Human Rights" or forfeit the right to continue such business dealings.

The City' Affirmative Action Policy Statement is:

The Mayor of the City of Missoula is committed to implement affirmative action to provide all persons equal opportunity for employment without regard to race, color, religion, national origin, age, marital status, ancestry, receipt of public assistance, political beliefs, physical or mental handicap, ex-offender status, or sex. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility of actively facilitating equal opportunity for present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all personnel actions are administered on the basis of job necessity.

Specific responsibility for development, implementation, monitoring and reporting will be assigned to the City Personnel staff under the supervision of the Mayor's Administrative Assistant.

It is the policy of the City of Missoula to take affirmative action to eliminate discrimination in personnel policies and procedures that have adverse impact on the "affected class" unless sex, ex-offenders status, and/or physical or mental handicap relates to a bona fide occupational qualification. Equal opportunities shall be provided for all City employees during their terms of employment. All applicants for City employment shall be recruited from the available labor market, and employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, C.E.T.A. program participants, trainees and applicants.



A Attachment "C"

October 26, 2006

David Shaw
Missoula Parks & Recreation
100 Hickory St.
Missoula, MT 59801



RE: LAFRAY LANE PARK PROPOSAL, OCTOBER 26, 2006 SCOPE OF WORK REVISIONS

Dear David,

Thank you for meeting with Bruce Anderson and me at the site on May 17, 2006. As we have been discussing since that time, the Missoula Parks & Recreation Dept, with your guidance is looking to develop this parcel of property with a connective trail and park irrigation system that fits within the neighborhood and does not effect existing private irrigation associated with the Orchard Homes Irrigation Company ditch system.

The following proposal is based upon several distinct tasks including:

1. Investigating and designing an adequate ditch crossing for a trail located on public lands at the end of Johnson Lane.
2. Determining the delivery requirements for the existing water users currently utilizing the open ditch on the east end of the park. Provide recommendations for pipe sizing in an effort to eliminate the existing open ditch because of safety concerns.
3. Identifying the delivery needs of the water users associated with the pipe(s) located on the land surface in the middle of the park.
4. Discuss potential options for an irrigation system that serves the park.
5. Providing an engineered design for the trail crossing located on public lands at the end of Johnson Lane.

SCOPE OF SERVICES

Task 1 – Johnson Lane Trail Crossing

1. Investigate the feasibility of using a culvert at the future trail crossing site. Work with George Tayer from the Orchard Homes Irrigation Company to identify any concerns about design or placement of a culvert. Identify any specific design criteria the district will require, such as size, grade placement, or protections.

Task 2 – East Ditch Requirements

1. Conduct user interviews in an effort to determine the area served and reasonable flow requirements. Check with George Tayer or other Irrigation Company representatives to identify all existing and potential water users served by this conveyance ditch.
2. Calculate flow capacity requirements for the users served by the existing east ditch. Determine piping options and give approximate costs for materials and installation.

Task 3 – Mid Park Surface Piping Irrigation of Properties to the North

1. Conduct user interviews in an effort to determine the area served and reasonable flow requirements. Check with George Tayer or other Irrigation Company representatives to identify the existing and potential water users.
2. Calculate flow capacity requirements for the users served by two existing delivery pipeline systems. Determine piping options and give approximate costs for materials and installation.

Task 4 – Park Irrigation

1. Discuss potential designs for park intake from the Orchard Homes Irrigation Company ditch.
2. Identify and discuss alternatives for continued irrigation when ditch flows diminish or are not available.

Task 5 – Johnson Lane Trail Crossing Engineering

1. Collect sufficient survey data to create a site drawing of the existing conditions.
2. Design adequate trail crossing with a set of engineered plans sufficient for the Parks Department to initiate bids from one or more qualified contractors. These drawings will include plan views, cross section views, and calculations describing the fill quantities and trail approach grades based upon these designs. Both structural railing and vegetative railing options will be discussed and cost estimates given for these options.

COST ESTIMATE

The estimated costs to provide the services outlined above are presented in the Cost Estimate Table below.

Estimated Costs: Lafray Lane Park Development

Task	Total Cost (\$)
Task 1 – Johnson Lane Trail Crossing	\$1,000.00
Task 2 – East Ditch Requirements	\$1,200.00
Task 3 – Mid Park Pipeline and Irrigation Requirements	\$1,200.00
Task 4 – Park Irrigation	\$1,000.00
Task 5 – Trail Crossing Engineering	\$3,200.00
Total	\$7,600.00

Deliverables will include a short report discussing each task and a cost range for completing the alternatives 1-4 listed above. The report will also include a set of engineered designs for the trail crossing that consists of a culvert, dirt fill, and grading.

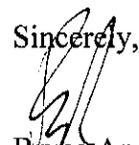
To authorize PBS&J to proceed, please sign the attached Professional Services Agreement referencing this October revised cost proposal. Thank you again for the opportunity work with you. If you have any questions, please call either Bruce or Karl at 721-0354.

Sincerely,


Karl Uhlig
Water Resource Specialist

PBS&J

Sincerely,


Bruce Anderson
Hydrologist, Program Mgr.

PBS&J