

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT**  
**Project 15-016: Margaret St. – Mount Ave. to Strand Ave.**  
**Curb/Sidewalk Design and Staking**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **CITY OF MISSOULA, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, 435 Ryman Street, Missoula, Montana 59802-4297, hereinafter referred to as “City,” and Territorial Landworks Inc., PO Box 3851, Missoula, Montana 59806, hereinafter referred to as “Consultant.”

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **Purpose:** City agrees to hire Consultant as an independent contractor to perform for City services described in the Scope of Services/Cost Estimate attached hereto as Exhibit A, and by this reference made a part hereof.
2. **Effective Date:** This Agreement is effective upon the date of its execution.
3. **Scope of Work/Task Deadlines:** Consultant shall perform the work and provide the services in accordance with the requirements of the Scope of Services/Cost Estimate (Exhibit A).
4. **Payment:** City agrees to pay Consultant an amount not to exceed Fifty Four Thousand Fifty Five and 00/100 Dollars (\$54,055.00) for services performed pursuant to the Scope of Services. Any alteration or deviation from the described work that involves extra costs will be performed by Consultant after written request by the City, and will become an extra charge over and above the contract amount. The parties must agree in writing upon any extra charges.
5. **Independent Contractor Status:** The parties agree that Consultant, Territorial Landworks Inc. is an independent contractor for purposes of this Agreement and the parties agree that Consultant is and shall be an independent contractor when performing services pursuant to this agreement. Consultant is not subject to the terms and provisions of the City’s personnel policies handbook and may not be considered a City employee for workers’ compensation or any other purpose. Consultant is not authorized to represent the City or otherwise bind the City in any dealings between Consultant and any third parties.

Consultant shall comply with the applicable requirements of the Workers’ Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Consultant shall maintain workers’ compensation coverage for all members and employees of Consultant’s business, except for those members who are exempted by law.

Consultant shall furnish the City with copies showing one of the following: (1) a binder for workers’ compensation coverage by an insurer licensed and authorized to provide workers’ compensation insurance in the State of Montana; or (2) proof of exemption from workers’ compensation granted by law for independent contractors.

**6. Indemnity and Insurance:** For other than professional services rendered, to the fullest extent permitted by law, Consultant agrees to defend, indemnify, and hold the City harmless against claims, demands, suits, damages, losses, and expenses connected therewith that may be asserted or claimed against, recovered from or suffered by the City by reason of any injury or loss, including but not limited to, personal injury, including bodily injury or death, property damage, occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Consultant or Consultant's agents or employees.

For the professional services rendered, to the fullest extent permitted by law, Consultant agrees to indemnify and hold the City harmless against claims, demands, suits, damages, losses, and expenses, including reasonable defense attorney fees, to the extent caused by the negligence or willful misconduct of the Consultant or Consultant's agents or employees.

For this purpose, Consultant shall provide City with proof of Consultant's liability insurance issued by a reliable company or companies for personal injury and property damage in amounts not less than as follows:

- Commercial General Liability - \$500,000 per occurrence; \$1,000,000 annual aggregate
- Professional Liability - \$500,000 per claim; \$1,000,000 annual aggregate

**7. Professional Service:** Consultant agrees that all services and work performed hereunder will be accomplished in a professional manner.

**8. Compliance with Laws:** Consultant agrees to comply with all federal, state and local laws, ordinances, rules and regulations. Consultant agrees to purchase a City business license.

**9. Nondiscrimination:** Consultant agrees that all hiring by Consultant of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of on the basis race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications.

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

**11. Modification and Assignability:** This document contains the entire agreement between the parties and no statements, promises or inducements made by either party or agents of either party, which are not contained in this written Agreement, may be considered valid or binding. This Agreement may not be enlarged, modified or altered except by written agreement signed by both

parties hereto. The Consultant may not subcontract or assign Consultant's rights, including the right to compensation or duties arising hereunder, without the prior written consent of City. Any subcontractor or assignee will be bound by all of the terms and conditions of this Agreement.

**12. 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 City. The City has the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any re-use without written verification or adaptation by the Consultant for the specific purpose intended will be at the City'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 City.

**13. Liaison:** City's designated liaison with Consultant is Doug Harby and Consultant's designated liaison with City is Cory Davis.

**14. Applicability:** This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana.

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument the day and year first above written.

**CITY OF MISSOULA, MONTANA**

By \_\_\_\_\_

JOHN ENGEN, Mayor

**ATTEST:**

By \_\_\_\_\_

MARTHA L. REHBEIN C.M.C., City Clerk

\_\_\_\_\_  
**CONSULTANT (Print Name Above)**

By \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

**APPROVED AS TO FORM**

By \_\_\_\_\_  
JIM NUGENT, City Attorney



Consulting Scope of Services & Cost Estimate					
PROJECT NAME: Margaret St - Mount to Strand Street Improvements			DATE: 3/2/2016		
100 Series - Preliminary Project Assessment and Planning			Consulting Cost Estimate		
Item No.	Description	Scope	TLI Services	Direct Expenses	Agency Review Fees
100	Project Management	TLI project meetings, schedule, and project coordination associated with the 100 Series portion of work.	\$ 345.00		
104	Scope and Budget Definition	Provided at no cost as promotional services. Task includes preparation of this Consulting Scope & Cost Estimate for the Project tasks.	\$ -		
113	Initial Client Consultation	TLI will meet with City of Missoula representatives to discuss scope and budget and overall project goals. Once City deems scope and budget acceptable City will put together a contract for TLI to sign.	\$ 200.00		
119	Review Right-of-Way, Plats & COS's	TLI Surveyor will review existing plats, deeds, and applicable property information to determine existing right-of-way widths. Defining the right-of-way widths will enable us to identify encroachments and determine where right-of-way acquisition or sidewalk easements will be necessary. From our past experience in the project area we should be able to quickly determine whether proposed sidewalk will be located within City Right-of-Way.	\$ 472.50		
134	Client Review	TLI to meet with City to present ROWs findings and discuss easement acquisition for project.	\$ 445.00		
199	Series 100 Exceptions	Unless a service is listed in the Scope of Services (Scope), it should be assumed that the service is not included at this time. If additional services which are not listed in the Scope are identified or desired, an amendment to the Scope will be necessary and can be provided along with the appropriate financial adjustment.	\$ -		
<b>Series 100 Total</b>			\$ 1,462.50	\$ -	\$ -
200 Series - Field Work & Surveying					
Item No.	Description	Scope	TLI Services	Direct Expenses	Agency Review Fees
200	Project Management	TLI project meetings, schedule, and project coordination associated with the 200 Series portion of work.	\$ 545.00		
202	General Site Visit	Project Engineer/Manager and Engineer Intern shall walk site to get general understanding of topography and existing features. Become familiar with the previously unidentified potential challenges to the project and take photos of the site. This info will be used to assist the survey crew in gathering pertinent data.	\$ 1,798.00		
244	Mapping On-Site Features and/or Topography	TLI Survey Crews will visit site to tie intersection monuments and property monuments sufficient to establish the ROW boundaries of the project area. The survey crew will tie improvements, site features and ground elevations sufficient to create an accurate site map. Contours will be generated at one-foot intervals based upon the collected data. Site features include, but not limited to: existing curb, driveways, mail boxes, utility lines, fences, power poles, and signs. Assumes mapping will extend 100' down each side street. Assumes 5 days of topographic mapping, and 1 day of Right of Way and Control Network Set Up. Mapping will be completed and referenced to the Montana State Plane coordinate system and the vertical datum will be referenced to NAVD88. Time included to provide survey crew instructions and utility locates to be requested.	\$ 7,785.50	\$ 525.00	
247	Mapping Reduction	Time included for TLI draftsman to reduce survey data, topography, and utility mapping into AutoCAD digital format for use in engineering designs. Mapping will be overlain on the boundary maps and referenced to the applicable property boundaries and rights-of-ways. Digital line work and surface data will be reviewed for quality and completeness prior to delivery or design. Time included for transfer of mapping to City of Missoula.	\$ 2,932.00		
299	Series 200 Exceptions	Unless a service is listed in the Scope of Services (Scope), it should be assumed that the service is not included at this time. If additional services which are not listed in the Scope are identified or desired, an amendment to the Scope will be necessary and can be provided along with the appropriate financial adjustment.	\$ -		
<b>Series 200 Total</b>			\$ 13,060.50	\$ 525.00	\$ -

<b>600 Series - Road, Street, Drainage, Traffic Planning &amp; Design</b>					
Item No.	Description	Scope	TLI Services	Direct Expenses	Agency Review Fees
600	Project Management	TLI project meetings, schedule, and project coordination associated with the 600 Series portion of work.	\$ 890.00		
602	Prepare Curb & Sidewalk Designs	TLI will coordinate all designs under the guidance of the Project Engineer. Based on final curb and sidewalk alignments plan and profile construction drawings will be prepared. Curb profiles will be designed at a minimum of 0.4% slope. Assumes full reconstruction of streets within the project area will take place, and crown of new street will be set between 2-3%. Areas requiring special attention such as existing driveways, pedestrian ramps, off street parking, and excessive cut/fill areas will be identified up front for detailed engineering. Assumes designs will utilize sumps for storm water disposal. Assumes City Standard Bridge will be used for crossing of existing irrigation ditch and no specific bridge plans will be needed. Plans will include cover sheet, plan and profile sheets, and details as appropriate. All sidewalks and intersections will be designed to meet ADA regulations. All street design and improvements will be coordinated through City of Missoula Development Services in conformance with City Standard Details and Specifications.	\$ 14,002.00		
606	Review of Plans and Client Meetings	The City will be provided with a set of plans, specifications, and an engineer's estimate when designs are at 90% completion for review. A meeting will be held with the City to discuss any identified concerns or questions. It is assumed that if issues arise during design development, TLI will meet with the City to solicit their opinion for a solution. Time included for plan revisions based on City comments.	\$ 4,968.00		
622	Right-of-Way & Easement Acquisition	Based on final alignments, TLI will assist City with Easements acquisitions. Assumes TLI will only provide legal descriptions and exhibits for easements and City will handle documents and coordination with property owners. Assumes 4 easement descriptions total for project.	\$ 1,569.00		
670	Road Plans and Public Works Approvals	Final road and drainage plans will be completed with plan, profile sheets, and detail sheets.	\$ 1,419.00		
699	Series 600 Exceptions	Unless a service is listed in the Scope of Services (Scope), it should be assumed that the service is not included at this time. If additional services which are not listed in the Scope are identified or desired, an amendment to the Scope will be necessary and can be provided along with the appropriate financial adjustment.	\$ -		
<b>Series 600 Total</b>			\$ 22,848.00	\$ -	\$ -
<b>800 Series - Construction Administration, Inspections, and Staking</b>					
Item No.	Description	Scope	TLI Services	Direct Expenses	Agency Review Fees
800	Project Management	TLI project meetings, schedule, and project coordination associated with the 800 Series portion of work.	\$ 800.00		
803	Quantity Estimates	Based on Final Construction Drawings, TLI will compute and deliver final quantities of curb, sidewalk, asphalt ramps, and similar items as well as embankment quantities in significant fill areas. Items not included are subgrade prep, base materials.	\$ 2,180.00		
821	Construction Staking/Surveying	TLI will provide construction staking and reference control for project improvements. One set of offset stakes to top back of curb will be provided for curb construction to the selected Contractor. Assumes 7 days of staking total. Re-staking required by contractor will be completed and invoiced to City, documentation will be provided to City for possible withholdings from Contractor pay. Cut sheets and staking exhibits will be provided to contractor for curb and sidewalk staking. <del>Time included to re-monument obliterated street intersection monuments removed due to street reconstruction. Time also included for filing corner recordation forms to Missoula County.</del>	\$ 9,400.00	\$ 500.00	
871	Construction Consultation(Optional)	As requested by City TLI will provide construction consultation for unforeseen issues and contractor questions on design. This work will not be provided unless directly requested by City.	\$ 2,000.00		
899	Series 800 Exceptions	Unless a service is listed in the Scope of Services (Scope), it should be assumed that the service is not included at this time. If additional services which are not listed in the Scope are identified or desired, an amendment to the Scope will be necessary and can be provided along with the appropriate financial adjustment.	\$ -		
<b>Series 800 Total</b>			\$ 14,380.00	\$ 500.00	\$ -

900 Series - Final Project Documentation			TLI Services	Direct Expenses	Agency Review Fees
Item No.	Description	Scope			
900	Project Management	TLI project meetings, schedule, and project coordination associated with the 900 Series portion of work.	\$ 345.00		
905	As-Builts - General	TLI will compile electronic files for inclusion in project close out documents and submittals. Files will be delivered to the City.	\$ 934.00		
999	Series 900 Exceptions	Unless a service is listed in the Scope of Services (Scope), it should be assumed that the service is not included at this time. If additional services which are not listed in the Scope are identified or desired, an amendment to the Scope will be necessary and can be provided along with the appropriate financial adjustment.	\$ -		
<b>Series 900 Total</b>			\$ 1,279.00	\$ -	\$ -
<b>Project Summary</b>			TLI Services	Direct Expenses	Agency Review Fees
<b>Item No. - Description</b>					
100 Series - Preliminary Project Assessment and Planning			\$ 1,462.50	\$ -	\$ -
200 Series - Field Work & Surveying			\$ 13,060.50	\$ 525.00	\$ -
600 Series - Road, Street, Drainage, Traffic Planning & Design			\$ 22,848.00	\$ -	\$ -
800 Series - Construction Administration, Inspections, and Staking			\$ 14,380.00	\$ 500.00	\$ -
900 Series - Final Project Documentation			\$ 1,279.00	\$ -	\$ -
Total Consulting and Reimbursable			\$ 53,030.00	\$ 1,025.00	\$ -
Total Estimate including Reimbursable			\$54,055.00		