

## **PROFESSIONAL SERVICES AGREEMENT**

**THIS IS AN AGREEMENT** made as of March 9, 2020 between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**OWNER**) and ACHEULEAN CONSULTING (**PROFESSIONAL**). **OWNER** intends to proceed with archaeological monitoring services for the Town Branch Commons in Lexington, Kentucky as described in the attached Request for Proposal document. The services are to include those required under the Archaeological Monitoring and Unanticipated Discovery Plan for Town Branch Commons during construction as contemplated in the **OWNER**'s Request for Proposal No. 46-2019. The services are hereinafter referred to as the Project.

**OWNER** and **PROFESSIONAL**, in consideration of their mutual covenants herein, agree in respect to the performance of archaeological monitoring services by **PROFESSIONAL** and the payment for those services by **OWNER** as set forth below.

**PROFESSIONAL** was selected by **OWNER** based upon its response to the Request for Proposal No. 46-2019

**PROFESSIONAL** shall provide professional consulting services for **OWNER** in all phases of the Project to which this Agreement applies, serve as **OWNER'S** archaeological monitoring representative for the Project as set forth below and shall give professional consultation and advice to **OWNER** during the performance of services hereunder.

### **SECTION 1 - BASIC SERVICES OF PROFESSIONAL**

**PROFESSIONAL** shall perform professional services as hereinafter stated which include archaeological monitoring services and special inspections incidental thereto.

The following documents are incorporated by reference herein as if fully stated and are attached hereto as exhibits: RFP No. 46-2019 (Exhibit "A") and **PROFESSIONAL**'s Response dated December 18, 2019 (Exhibit "B").

To the extent there is conflict among their provisions, the provisions of this Agreement shall take precedence, followed by the provisions of Request for Proposal No. 46-2019 (Exhibit "A").

After written authorization to proceed with the Project, **PROFESSIONAL** shall:

1. Notify the **OWNER** in writing of its authorized representative who shall act as Project Manager and liaison representative between the **PROFESSIONAL** and the **OWNER**.
2. On the basis of "Selection Criteria" in the "Request for Proposal", attached in Exhibit "A", conduct field surveys and gather other necessary data or information, prepare/perform all required deliverables listed in the Request for Proposal. See Exhibit "A" for complete listing of all deliverables.

This Agreement (consisting of pages 1 to 8 inclusive), together with the Exhibits and schedules identified above, constitutes the entire Agreement between **OWNER** and **PROFESSIONAL** and supersedes all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

The General Condition provisions of RFP No. 46-2019 are incorporated herein by reference as if fully stated.

## **SECTION 2 - ADDITIONAL SERVICES BY PROFESSIONAL**

- 2.1. The **OWNER** may desire to have the **PROFESSIONAL** perform work or render services in connection with this Project other than provided by Exhibit A of this Agreement. Such work shall be considered as "Additional Services", subject to a change order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore. Work under such change order shall not proceed until the **OWNER** gives written authorization. Should the **OWNER** find it desirable to have previously satisfactorily completed and accepted plans or parts thereof revised, the **PROFESSIONAL** shall make such revisions as directed, in writing, by the **OWNER**. This work shall be considered as "Additional Services" and shall be paid as such.
- 2.2. All "Additional Services" is subject to prior written authorization of **OWNER** and necessary appropriations made by the Urban County Council.

## **SECTION 3 - OWNER'S RESPONSIBILITIES**

### **OWNER shall:**

- 3.1. Provide criteria and information as to **OWNER'S** requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- 3.2. Assist **PROFESSIONAL** by placing at his disposal available information pertinent to the Project.
- 3.3. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **PROFESSIONAL**, and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of **PROFESSIONAL**.
- 3.4. Designate in writing a person to act as **OWNER'S** representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define **OWNER'S** policies and decisions with respect to materials, equipment, elements and systems pertinent to **PROFESSIONAL'S** services.

- 3.5. Give written notice to **PROFESSIONAL** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **PROFESSIONAL'S** services, or any defect in the work of Contractor(s).
- 3.6. Furnish or direct **PROFESSIONAL** to provide, necessary Additional Services as stipulated in Section Two (2) of this Agreement or other services as required.

#### **SECTION 4 - PERIOD OF SERVICES**

- 4.1. Time is of the essence in the performance of this Agreement.
- 4.2. The provisions of this Section Four (4) and the various rates of compensation for **PROFESSIONAL'S** services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion.

If delays result by reason of acts of the **OWNER** or approving agencies or other causes, which are beyond the control of the **PROFESSIONAL**, an extension of time for such delay will be considered. If delays occur, the **PROFESSIONAL** shall within 30 days from the date of the delay apply in writing to the **OWNER** for an extension of time for such reasonable period as may be mutually agreed upon between the parties, and if approved, the Project schedule shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of the **OWNER** of any of its rights in the Agreement. Section 6.5, under DISPUTES, of this Agreement, shall apply in the event the parties cannot mutually agree upon an extension of time.

In the event that the overall delay resulting from the above described causes is sufficient to prevent complete performance of the Agreement within six (6) months of the time specified therein, the Agreement fee or fees shall be subject to reconsideration and possible adjustment. Section 6.5 of this Agreement shall apply in the event the parties cannot mutually agree upon an adjustment of fee.

#### **SECTION 5 - PAYMENTS TO PROFESSIONAL**

##### **5.1 Rates of Payment for Services of PROFESSIONAL**

In consideration of the services described in Exhibits A and B, **OWNER** shall pay **PROFESSIONAL** an amount not to exceed ONE HUNDRED SIXTY THOUSAND TWO HUNDRED THIRTY THREE AND ZERO CENTS (\$160,233.00), to be billed as incurred at the rates provided in Exhibit C which sums shall include, without limitation, all direct labor and supervision necessary to complete the item in a manner that meets or exceeds the customer's satisfaction, labor payroll costs, overhead (such as unemployment taxes, general liability insurance, rent, utilities, phones, supplies, administrative salaries, F.I.C.A., sick and vacation leave, etc.), disposal fees, tool allowances, equipment fees, materials, profits, and all

other costs used on, for, or in association with the job. The negotiated cost of services is represented in the Form of Proposal, and is summarized in Exhibit C.

#### **Other Provisions Concerning Payments.**

**5.2.1.** PROFESSIONAL shall submit a schedule of values subject to approval by the OWNER prior to starting work. The approved schedule of values will be the basis for monthly statements for Basic Services and Additional Services rendered. The Statements will be based total services rendered at the time of billing and are subject to approval by the OWNER. OWNER shall pay PROFESSIONAL'S monthly statements within thirty (30) days of receipt.

**5.2.2.** In the event the Agreement is terminated by the OWNER without fault on the part of the PROFESSIONAL, the PROFESSIONAL shall be paid for the work performed or services rendered.

### **SECTION 6 – ADDITIONAL GENERAL CONSIDERATIONS**

#### **6.1. Termination**

**6.1.1.** The obligation to provide further services under this Agreement may be terminated by either party upon ten (10) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, provided the non-terminating party fails to cure such default within the ten (10) day period.

**6.1.2.** The OWNER reserves the right to terminate the Agreement for any reason at any time upon seven (7) days written notice to the PROFESSIONAL.

#### **6.2. Ownership and Reuse of Documents.**

All documents, including Drawings and Specifications, prepared by the PROFESSIONAL pursuant to this Agreement shall be delivered to and become the property of the OWNER. The OWNER shall have the right to reuse same without restriction or limitation, but without liability or legal exposure to PROFESSIONAL.

#### **6.3. Legal Responsibilities and Legal Relations.**

**6.3.1.** The PROFESSIONAL shall familiarize itself with and shall at all times comply with all federal, state and local laws, ordinances, and regulations which in any manner affect the services of this Agreement.

**6.3.2.** In performing the services hereunder, the PROFESSIONAL and its employees, agents, officers, and representatives shall not be deemed or construed to be employees of OWNER in any manner whatsoever. Except as otherwise provided in this Agreement, the PROFESSIONAL shall be acting as an independent contractor. The PROFESSIONAL shall not hold itself out as, nor claim to be, an officer or employee of OWNER by reason hereof and shall not make any claim,

demand or application to or for any right or privilege applicable to an officer or employee of OWNER. The PROFESSIONAL shall be solely responsible for any claims for wages or compensation by PROFESSIONAL'S employees, agents, officers, and representatives and shall save and hold OWNER harmless therefrom.

6.3.3. The parties hereto agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes.

#### **6.4. Successors and Assigns.**

6.4.1. PROFESSIONAL binds itself and its partners, successors, executors, administrators, assigns and legal representatives to this Agreement in respect to all covenants, agreements and obligations of this Agreement. PROFESSIONAL shall not assign any interest, obligation or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent of OWNER.

6.4.2. The PROFESSIONAL shall not subcontract more than fifty percent (50%) of the work, based upon dollar value, to be provided under this Agreement. The PROFESSIONAL shall obtain written approval prior to subletting or assigning any services contained in this Agreement, and consent to sublet or assign any part of this Agreement shall not be construed to relieve the PROFESSIONAL of any responsibility for compliance with the provisions of this Agreement.

6.4.3. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than OWNER and PROFESSIONAL.

#### **6.5. Disputes.**

Except as otherwise provided in this Agreement, any dispute concerning the amount of payment due the PROFESSIONAL or any dispute concerning any question of fact of any act to be performed under this Agreement, which is not disposed of by agreement between the Urban County Division of Central Purchasing and the PROFESSIONAL, shall be submitted to the Commissioner, Department of General Services, Lexington-Fayette Urban County Government for review. The decision of the Commissioner as to the determination of such dispute shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the PROFESSIONAL shall proceed diligently with the performance of the Agreement in accordance with the directions of the OWNER.

#### **6.6. Accuracy of PROFESSIONAL'S Work.**

The PROFESSIONAL shall be required to perform this Agreement in accordance with the degree of ordinary and reasonable skill and care usually exercised by professional members of the PROFESSIONAL's field prevailing at the time, place and under similar conditions as the services hereunder are rendered.

The **PROFESSIONAL** shall be responsible for the accuracy of all work, even though such work may have been accepted by the **OWNER**, and shall make any necessary revisions or corrections resulting from errors or omissions on the part of the **PROFESSIONAL**, without additional compensation. By submission of testing and inspection reports, results, summaries, etc., to the **OWNER**, the **PROFESSIONAL** has made a statement that, to the best of its belief and knowledge, the information is accurate. Failure on the part of **PROFESSIONAL** to provide the expected level of accuracy may be grounds for the **OWNER** to disqualify **PROFESSIONAL** from consideration for future **PROFESSIONAL** service agreements.

**6.7. Security Clause.**

The **PROFESSIONAL** certifies that it shall not at any time release or divulge any information concerning the services covered by this Agreement to any person or any public or private organization except the **OWNER** without prior approval of the **OWNER**.

**6.8. Access to Records.**

The **PROFESSIONAL** shall maintain all books, documents, papers, and accounting records, and make such materials available at its respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract for inspection by the **OWNER**, and copies thereof shall be furnished if requested. Failure to maintain such records for three (3) years after the date of final payment may be grounds for the **OWNER** to disqualify the **PROFESSIONAL** from consideration for future **PROFESSIONAL** service agreements.

**6.9. Required Risk Management Provisions.**

The Risk Management Provisions of RFP No. 46-2019 are incorporated herein by reference as if fully stated. Copies of the required Certificates of Insurance shall be provided to **OWNER** as required therein.

**SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this service agreement, the **PROFESSIONAL** agrees as follows:

- 7.1.** The **PROFESSIONAL** will not discriminate against any employee or application for employment because of race, color, religion, national origin, sex, age or handicap. The **PROFESSIONAL** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, sex, age or handicap. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The **PROFESSIONAL** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.

7.2 The PROFESSIONAL will, in all solicitations or advertisements for employees placed by or on behalf of the PROFESSIONAL, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, age (between forty and seventy), or handicap.

**SECTION 8 - SPECIAL PROVISIONS**

8.1. This Agreement is subject to the following provisions.

8.1.2. Pursuant to subparagraph 3.4 of this Agreement, OWNER has assigned the appropriate LFUCG employee (the "OWNER'S Agent"), as the authorized agent of OWNER, to monitor, direct and review the performance of work of the PROFESSIONAL. Documents, data, reports and all matters associated with carrying out this Agreement shall be addressed to the OWNER'S Agent or their designee. Questions by the PROFESSIONAL regarding interpretations of the terms, provisions and requirements under this Agreement shall be addressed to the OWNER'S Agent or their designee. The PROFESSIONAL shall look only to the OWNER'S Agent or their designee for direction in its performance under this Agreement; no other direction shall be binding upon OWNER. OWNER shall respond to written requests by PROFESSIONAL within thirty (30) days.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

OWNER (LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT):

Signature: Linda Gorton  
LINDA GORTON, MAYOR

Date: 3/11/2020

ATTEST: \_\_\_\_\_

Abigail Allan  
~~ABIGAIL ALLAN, COUNCIL CLERK~~  
Deputy Clerk, Mackenzie Sommer

PROFESSIONAL (ACHEULEAN CONSULTING):

Signature: [Handwritten Signature]

Printed Name: Jason C. Flay, MA, RPA

Position: President

Date: 3/9/2020

COMMONWEALTH OF KENTUCKY  
COUNTY OF (Fayette)

The foregoing instrument was subscribed, sworn to and acknowledged before me by  
Jason Flay as President for  
and on behalf of Acheulean Consulting on this the 9<sup>th</sup> day of  
March, 2020.

My commission expires: 2/2/2023

[Handwritten Signature]  
NOTARY PUBLIC, STATE AT LARGE, KY

