

CONSULTANT SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of this ____ day of _____, 2018, by and between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**OWNER**) and ELEMENT DESIGN, PLLC, (**CONSULTANT**). **OWNER** intends to proceed with architectural/engineering design services as described in the attached Request for Proposal document. The services are to include the preparation of construction documents for a new playground at Shillito Parkas contemplated in the **OWNER**'s Request for Proposal No. 42-2017. The services are hereinafter referred to as "the Project."

OWNER and **CONSULTANT**, in consideration of the mutual covenants herein, agree in respect of the performance of professional architectural/engineering services by **CONSULTANT** and the payment for those services by **OWNER** as set forth below.

CONSULTANT was selected by **OWNER** based upon its response to the Request for Proposal No. 42-2017.

CONSULTANT shall provide professional consulting services for **OWNER** in all phases of the Project to which this Agreement applies, serve as **OWNER'S** professional architectural and engineering 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 CONSULTANT

- 1.1. **CONSULTANT** shall perform professional services as hereinafter stated which include customary architectural design and engineering incidental thereto.
- 1.2. The following documents are incorporated by reference herein as if fully stated and are attached hereto as exhibits: RFP No. 42-2017 (Exhibit "A") and Consultant's Response dated November 8, 2017 (Exhibit "B").
- 1.3. 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. 42-2017 (Exhibit "A").
- 1.4. After written authorization to proceed with Phase A Schematic Design Phase, **CONSULTANT** shall:
 - 1.4.1. Notify **OWNER** in writing of its authorized representative who shall act as Project architect and liaison representative between **CONSULTANT** and **OWNER**.
 - 1.4.2. 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 Phase A schematic design documents consisting of design criteria, energy modeling, preliminary drawings, outline specifications, and cost estimates as well as

all required deliverables listed in the Request for Proposal. See Exhibit "A" for complete listing of all deliverables.

- 1.5. This Agreement (consisting of pages 1 to 10 inclusive), together with the Exhibits and schedules identified above, constitutes the entire Agreement between **OWNER** and **CONSULTANT** 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.
- 1.6. The General Condition provisions of RFP No. 42-2017 are incorporated herein by reference as if fully stated.

SECTION 2 - ADDITIONAL SERVICES BY CONSULTANT

- 2.1. **OWNER** may desire to have **CONSULTANT** 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 **OWNER** gives written authorization. Should **OWNER** find it desirable to have previously satisfactorily completed and accepted plans or parts thereof revised, **CONSULTANT** shall make such revisions as directed, in writing, by **OWNER**. This work shall be considered as "Additional Services" and shall be paid as such.
- 2.2. All "Additional Services" are subject to prior written authorization of **OWNER** and necessary appropriations made by the Urban County Council. **OWNER** shall not be liable for the value of or costs incurred by **CONSULTANT** in providing Additional Services without 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 **CONSULTANT** 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 **CONSULTANT**, and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of **CONSULTANT**.

- 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 **CONSULTANT'S** services.
- 3.5. Give written notice to **CONSULTANT** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect in the work of Contractor(s).
- 3.6. Furnish or direct **CONSULTANT** 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. All services to be performed by **CONSULTANT** under the terms of this Agreement shall be performed in full, without exception, by no later than January 1, 2019. Time is of the essence.
- 4.2. The provisions of this Section Four (4) and the various rates of compensation for **CONSULTANT'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.
- 4.3. If delays result by reason of acts of the **OWNER** or approving agencies or other causes, which are beyond the control of the **CONSULTANT**, an extension of time for such delay will be considered. If delays occur, the **CONSULTANT** 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 of this Agreement shall apply in the event the parties cannot mutually agree upon an extension of time.
- 4.4. 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 CONSULTANT

5.1 Lump Sum Payments.

In consideration of the services to be provided by **CONSULTANT** and the duties and obligations adopted by **CONSULTANT** in this Agreement, **OWNER** shall pay **CONSULTANT** FORTY-NINE THOUSAND DOLLARS AND XX/100 (\$49,000.00).

Payment shall be tendered to **CONSULTANT** in installments of the amounts listed below upon **CONSULTANT**'s final and complete submission of the following services or products, defined further in Exhibits A and B, and **OWNER**'s acceptance, review, and approval of same. Any dispute about the acceptability of such services or products shall be governed by the dispute procedure established in Section 6.5 of this Agreement. **OWNER** shall pay **CONSULTANT** within thirty (30) days of approval of the final and complete services or products.

<u>Total Cost of Services Below:</u>	\$49,000
Topographic Survey (and geotechnical if needed):	\$ 8,000
Pre-Design Site Review and Analysis:	\$ 4,000
Public Input Facilitation Phase:	\$10,000
Schematic Design and Cost Estimation:	\$ 8,000
Construction Documents:	\$19,000

The lump sum prices listed above include all direct labor and supervision necessary to complete the item in a manner that meets or exceeds the customer's satisfaction. It also includes the labor payroll costs, overhead (such as unemployment taxes, general liability insurance, rent, utilities, phones, supplies, administrative salaries, F.I.C.A. sick and vacations, etc.) disposal fees, tool allowances, equipment, materials, profit, and all other costs directly or indirectly related to the job.

5.2 Payment for Additional Services.

Additional services, as permitted under Section 2, shall be compensated at the following unit rates. All unit rates shall include all direct labor, any supervision required, labor payroll costs, overhead (such as unemployment taxes, general liability insurance, rent, utilities, phones, supplies, administrative salaries, F.I.C.A. sick and vacations, etc.) disposal fees, tool allowances, equipment, materials, profit, and all other costs directly or indirectly related to the job.

<u>TITLE/SKILL LEVEL</u>	<u>HOURLY RATE</u>
<u>Element Design</u>	
Principal	\$125/HR
Project Engineer/Landscape Architect	\$100/HR
Landscape Designer	\$85/HR
<u>Leathers and Associates</u>	
Principal	\$170/HR

Lead Designer	\$150/HR
Project Designer	\$140/HR
Senior Construction Supervisor	\$140/HR
Construction Supervisor	\$130/HR

Additional Services may require procurement beyond the base contract. Procurement shall comply with the specifications set forth herein. The Consultant markup over the invoiced price shall be 0%.

5.3. Other Provisions Concerning Payments.

5.3.1. In the event the Agreement is terminated by **OWNER** without fault on the part of **CONSULTANT**, **CONSULTANT** shall be paid for the work performed or services rendered an amount bearing the same ratio to the total Agreement fee as the amount of work completed or partially completed and delivered to **OWNER** is to the total amount of work provided for herein, as determined by mutual agreement between **OWNER** and **CONSULTANT**.

5.3.2. In the event the services of **CONSULTANT** are terminated by the **OWNER** for fault on the part of **CONSULTANT**, **CONSULTANT** shall be paid reasonable value for the work performed or services rendered and delivered, and the amount to be paid shall be determined by the **OWNER**.

5.3.3. In the event **CONSULTANT** shall terminate the Agreement because of gross delays caused by **OWNER**, **CONSULTANT** shall be paid as set forth in Section 5.3.1. above.

SECTION 6 – ADDITIONAL GENERAL CONSIDERATIONS

6.1. Termination

6.1.1. The obligation to provide further services under this Agreement may be terminated by **CONSULTANT** upon ten (10) days written notice in the event of substantial failure by **OWNER** to perform in accordance with the terms hereof through no fault of **CONSULTANT**, provided **OWNER** fails to cure such default within ten (10) days of receiving written notice from **CONSULTANT** of the default.

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

6.2. Ownership and Reuse of Documents.

All documents, including Drawings and Specifications, prepared by **CONSULTANT** pursuant to this Agreement shall be delivered to and become the property of **OWNER**. **OWNER** shall have

the right to reuse same without restriction or limitation, but without liability or legal exposure to **CONSULTANT**.

6.3. Legal Responsibilities and Legal Relations.

6.3.1. **CONSULTANT** 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, **CONSULTANT** and its **CONSULTANTS**, employees, agents and representatives shall not be deemed or construed to be employees of **OWNER** in any manner whatsoever. Except as otherwise provided in this Agreement, **CONSULTANT** shall be acting as an independent contractor. **CONSULTANT** 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**. **CONSULTANT** shall be solely responsible for any claims for wages or compensation by **CONSULTANT'S** employees, agents and representatives, including **CONSULTANTS**, 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. **CONSULTANT** 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. **CONSULTANT** shall not assign any interest, obligation or benefit in this Agreement. **CONSULTANT** 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. **CONSULTANT** shall not subcontract more than fifty percent (50%) of the work, based upon dollar value, to be provided under this Agreement. **CONSULTANT** 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 **CONSULTANT** 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 **CONSULTANT**.

6.5. Disputes.

Except as otherwise provided in this Agreement, any dispute concerning the amount of payment due **CONSULTANT** 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 **CONSULTANT**, 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, **CONSULTANT** shall proceed diligently with the performance of the Agreement in accordance with the directions of **OWNER**.

6.6. Accuracy of CONSULTANT'S Work.

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

CONSULTANT shall be responsible for the accuracy of all work, even though Drawings and Specifications have been accepted by **OWNER**, and shall make any necessary revisions or corrections resulting from errors and/or omissions on the part of **CONSULTANT**, without additional compensation. By submission of reports, soils and subsurface information, quantities estimates, calculations and Drawings and Specifications to **OWNER**, **CONSULTANT** has made a statement that, to the best of its belief and knowledge, the information is accurate. Failure on the part of **CONSULTANT** to provide the expected level of accuracy may be grounds for **OWNER** to disqualify **CONSULTANT** from consideration for future **CONSULTANT** service agreements.

6.7. Security Clause.

CONSULTANT 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 **OWNER** without prior approval of **OWNER**.

6.8. Access to Records.

CONSULTANT and its sub-**CONSULTANTS** shall maintain all books, documents, papers, and accounting records, and make such materials available at their 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 **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 **OWNER** to disqualify **CONSULTANT** from consideration for future consultant service agreements.

6.9. Required Risk Management Provisions.

The Risk Management Provisions of RFP No. 42-2017 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, **CONSULTANT** agrees as follows:

- 7.1. **CONSULTANT** will not discriminate against any employee or application for employment because of race, color, religion, national origin, sex, age or handicap. **CONSULTANT** 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. **CONSULTANT** 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 **CONSULTANT** will, in all solicitations or advertisements for employees placed by or on behalf of **CONSULTANT**, 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 - COMMUNICATIONS

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

**LFUCG
(OWNER):**

Jim Gray, Mayor

Date

**ELEMENT DESIGN, PLLC,
(CONSULTANT):**



Ramona Fry, Principal

1/25/18
Date