

PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of _____, 2015, between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT** (OWNER) and **TATE HILL JACOBS ARCHITECTS** (CONSULTANT). Agreement provides for Roofing Design Services as described in the attached Exhibit A, "Request for Proposals/Scope of Professional Services and Related Matters, RFP #14-2015." These services are to include Re-roofing design as related to completion and submission of reports and deliverables as described in Exhibit A, detailing the findings of all field inspections (inventory and required analysis to be completed by the CONSULTANT). The services are hereinafter referred to as the PROJECT.

OWNER and CONSULTANT, in consideration of their mutual covenants, herein agree in respect of the performance of Roofing Design Services provided by CONSULTANT and the payment for those services by OWNER as set forth below.

CONSULTANT shall provide roofing design services for OWNER in all phases of the PROJECT to which this Agreement applies, serve as OWNER'S 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. General

CONSULTANT shall perform professional services as hereinafter stated that provide roof system design solutions for use with bidding, construction administration and inspection services for the project. These services include pre-design, schematic design, design development, construction document preparation, bidding and final bid documents for the two buildings, along with final revisions to construction and bid documents. CONSULTANT shall issue a Punch List, address correction of Punch List items, and perform final inspection and closeout of the project as specified in the Roofing Design proposal. Services shall be performed for two project locations:

- 1.1.1.) Government Center Lower Roofs (as noted in Appendix A of RFP)
- 1.1.2.) Arts Place Roofs (as noted in Appendix B of RFP).

1.2. Pre-Design

After written authorization to proceed, CONSULTANT shall:

- 1.2.1. Notify the OWNER in writing of its authorized representative who shall act as Project Manager and liaison representative between the CONSULTANT and the OWNER.
- 1.2.2. The CONSULTANT **must perform all duties** necessary to fully complete the deliverables described in attached Exhibit A "Request for Proposals/Scope of Professional Services and Related Matters, RFP #14-2015" (including Addendums 1

& 2), and attached Exhibit C the "Proposal of Professional Services and Related Matters" (the CONSULTANT's response to RFP #14-2015), and amendments to the CONSULTANT'S proposal included in attached Exhibit D "Further Description of Basic Professional Services and Related Matters." To the extent of any conflict among the provisions of these documents and/or this Agreement, the provisions of this Agreement shall control, followed by the provisions of **EXHIBIT A**, then **EXHIBIT D**, and then **EXHIBIT C**.

- 1.2.3** The CONSULTANT shall provide written documentation of all meetings and be responsible for incorporating all comments and changes resulting therefrom in final work product.
- 1.2.4.** The CONSULTANT shall submit two (2) copies (hardcover) of all initial draft final work products for this PROJECT. The copies of the initial draft final reports are submitted for review and comment by the OWNER, and should be presented in person to the OWNER.
- 1.2.5.** After the OWNER'S detailed review, the CONSULTANT will revise the initial draft final for all work products for this PROJECT. Two (2) copies (hardcover) and one electronic copy (pdf format) of the all final work products for this PROJECT, including all appendices, shall be provided to the OWNER.
- 1.2.6.** Immediately notify OWNER of any delay in the delivery of a work product or deliverable, regardless of cause. Give written notice to OWNER within five (5) business days whenever CONSULTANT observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT'S services.

SECTION 2 - EXTRA WORK BY CONSULTANT

- 2.1.** The OWNER may desire to have the CONSULTANT perform work or render services in connection with this PROJECT other than provided by the expressed intent of this Agreement. Such work shall be considered as "Extra Work", subject to a modified Task Order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore. Work under such modified Task Order shall not proceed until the OWNER gives written authorization. Should the OWNER find it desirable to have previously satisfactorily completed and accepted project deliverables / reports or parts thereof revised, the CONSULTANT shall make such revisions as directed, in writing, by the OWNER. This work shall be considered as "Extra Work" and shall be paid as such.
- 2.2.** All "Extra Work" 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 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 Extra Work 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. See attached Exhibit D "Further Description of Basic Professional Services and Related Matters" for project schedules.
- 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 a delay results from the acts of OWNER or another entity that is required to permit or approve the work or services, an extension of time for such delay will be considered by OWNER.
 - 4.3.1. If the above type of delay occurs and CONSULTANT wants an extension of time, it must, within ten (10) days from the date of the delay, apply in writing to OWNER for an extension of time for a reasonable period, which must be agreed upon by OWNER.
 - 4.3.2. If the extension of time is approved by OWNER, the PROJECT schedule/Final Task Order 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 OWNER of any of its other rights in the Agreement.
 - 4.3.3. If the above type of delay would prevent complete performance of the PROJECT/Final Task Order within ninety (90) days of the time specified therein, OWNER shall have the option of cancelling the PROJECT/Final Task Order or otherwise adjusting the scope of the services or work and any related fees.
 - 4.3.4. If the parties cannot mutually agree to an extension of time or an adjustment, Section 6.5 under "DISPUTES" of this Agreement shall apply.

4.4. If delays result solely by reason of acts of the CONSULTANT, the CONSULTANT must immediately notify the OWNER in the event of such delay, and provide the OWNER a written action plan within five (5) business days on how it will reasonably attempt to resolve the delay. If the parties cannot mutually agree to an extension of time or an adjustment, Section 6.5 under “DISPUTES” of this Agreement shall apply. If the above type of delay would prevent complete performance of the PROJECT/Final Task Order within ninety (90) days of the time specified therein, OWNER shall have the option of cancelling the PROJECT/Final Task Order or otherwise adjusting the scope of the services or work and any related fees.

SECTION 5 - PAYMENTS TO CONSULTANT

5.1. Methods of Payment for Services of CONSULTANT.

5.1.1. For Basic Services

OWNER shall issue individual task orders for each work assignment performed under this Agreement by CONSULTANT or its sub-consultant/s. Each task order shall contain scope of work, fee, and schedule for performance of the work. Individual task orders shall be of the form included in EXHIBIT D.

5.1.1.a Fee payable to CONSULTANT under individual task order shall be developed using hourly rates included in EXHIBIT D or as amended in accordance with provisions therein.

5.1.1.b Terms of payment to CONSULTANT shall be specified in each task order. For assignments with defined scope, lump sum task orders shall be issued. Otherwise, task orders shall include time and materials payment terms.

5.1.1.c Each task order issued shall receive prior written approval of OWNER prior to CONSULTANT proceeding with said work. The OWNER’s designated agent in Section 8.1.1. shall be the only person authorized to provide such approval.

5.1.2. For Extra Work

Extra Work shall be paid for by the OWNER on the basis of a fixed fee, the amount of which shall be determined by negotiation. The OWNER shall have the right to negotiate alternate methods of payment for Extra Work if the OWNER determines that the fixed fee basis is not feasible. In the event the OWNER and the CONSULTANT are unable to agree upon the amount of payment for Extra Work, then the amount of such payment shall be determined pursuant to Section 6.5 (Disputes).

5.2. Times of Payment

5.2.1 CONSULTANT shall submit to OWNER detailed monthly statements for Basic Services and Extra Work rendered. The Statements will be based upon CONSULTANT'S estimate of the proportion of the total services actually completed at the time of billing. OWNER shall respond to CONSULTANT'S monthly statements within thirty (30) days, either denying payment or making payment.

5.3. Other Provisions Concerning Payments

5.3.1. In the event the Agreement is terminated by the OWNER without fault on the part of the CONSULTANT, the CONSULTANT shall be paid for the work performed or services rendered for which it has not already been paid in an amount bearing the same ratio to the total Agreement fee as the amount of work completed or partially completed and delivered to the OWNER is to the total amount of work provided for herein, as determined by mutual agreement between the OWNER and the CONSULTANT.

5.3.2. In the event the services of the CONSULTANT are terminated by the OWNER for fault on the part of the CONSULTANT, the CONSULTANT shall be paid reasonable value of the work performed or services rendered and delivered for which it has not already been paid, and the amount to be paid shall be determined by the OWNER.

SECTION 6 - GENERAL CONSIDERATIONS

6.1. Termination

6.1.1. CONSULTANT may only terminate this Agreement due to OWNER'S material breach of the terms hereof which breach causes CONSULTANT to be unable to perform its duties and responsibilities under this Agreement and upon forty-five (45) days written advance notice to OWNER.

6.1.2. The OWNER may terminate this Agreement for cause upon seven (7) business days written advance notice to the CONSULTANT. The OWNER reserves the right to terminate the Agreement for any reason whatsoever, with or without cause, at any time upon thirty (30) days written advance notice to the CONSULTANT.

6.2. Ownership and Reuse of Documents

All documents, including raw data, reports, Drawings and Specifications, prepared by the CONSULTANT 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 CONSULTANT.

6.3. Legal Responsibilities and Legal Relations

6.3.1. The CONSULTANT shall familiarize himself with and shall at all times comply with all federal, state, and local laws, ordinances, and regulations that in any manner affect the services of this Agreement.

6.3.2. In performing the services hereunder, the 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, the CONSULTANT shall be acting as an independent contractor. The 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. The 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, and that venue of any legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky. The parties further agree that Kentucky law shall apply with respect to the interpretation of any provision of this Agreement.

6.4. Successors and Assigns

6.4.1. CONSULTANT binds itself and his 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 nor transfer any interest in the same, whether by assignment or novation, without prior written consent of OWNER.

6.4.2. The CONSULTANT shall not subcontract more than fifty percent (50%) of the work, based upon dollar value of the work. The 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 the 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 hereunder may be resolved by agreement of the OWNER'S Agent (Section 8.1.1) and the CONSULTANT. In the absence of such an agreement, the dispute shall be submitted to the OWNER'S Commissioner, Department of

General Services, whose decision 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 CONSULTANT shall proceed diligently with the performance of the Agreement in accordance with the directions of the OWNER.

6.6. Accuracy of CONSULTANT'S Work

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

The CONSULTANT shall be responsible for the accuracy of all work, even though raw data, reports, Drawings and Specifications have been accepted by the OWNER, and it shall make any necessary revisions or corrections resulting from its errors and/or omissions for no additional compensation. By submission of reports, soils and subsurface information, quantities estimates, calculations and Drawings and Specifications to the OWNER, the CONSULTANT has made an incontrovertible representation that the information is accurate within the appropriate standard of skill and care.. Failure on the part of CONSULTANT to provide the expected level of accuracy may be grounds for the OWNER to terminate this Agreement.

6.7. Security Clause

The CONSULTANT certifies that he 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 unless required by law

6.8. Access to Records

The CONSULTANT and his 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 Agreement period and for three (3) years from the date of final payment under the Agreement 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 CONSULTANT from consideration for future consultant Professional Service Agreements.

6.9. Risk Management Provisions, Insurance and Indemnification

6.9.1. DEFINITIONS

The CONSULTANT understands and agrees that the Risk Management Provisions of this Agreement define the responsibilities of the CONSULTANT to the OWNER.

As used in these Risk Management Provisions, the terms “CONSULTANT” and “OWNER” shall be defined as follows:

- a. CONSULTANT means the consultant and its employees, agents, servants, owners, principals, licensees, assigns and subcontractors of any tier.
- b. OWNER means the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, boards, assigns, volunteers, and successors in interest.

6.9.2. INDEMNIFICATION AND HOLD HARMLESS PROVISION

CONSULTANT shall defend, indemnify, and hold harmless OWNER from and against all liability, claims, losses, actions, costs, expenses, obligations, fines, and assessments of whatever kind, including defense costs and reasonable attorney's fees, that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by CONSULTANT's (or its subcontractors or subconsultants of any tier) performance or breach of the Agreement provided that such claim, damage, loss or expense is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property, including the loss of use resulting therefrom; or to or from negligent acts, errors or omissions or willful misconduct; provided however, that CONSULTANT shall not be required to indemnify for damages caused solely by the negligent act or omission or willful misconduct of OWNER. Notwithstanding, the foregoing, with respect to any professional services performed by CONSULTANT hereunder (and to the fullest extent permitted by law), CONSULTANT shall indemnify, save, hold harmless and defend OWNER from and against any and all liability, damages and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees, for any damage due to death or injury to any person or injury to any property (including the loss of use resulting therefrom) to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of CONSULTANT in the performance of this agreement. In the event OWNER is alleged to be liable based upon any of the above, CONSULTANT shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by OWNER, which approval shall not be unreasonably withheld. This Indemnification and Hold Harmless Provision shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this Agreement.

6.9.3 FINANCIAL RESPONSIBILITY

CONSULTANT understands and agrees that it shall, prior to final acceptance of its bid and the commencement of any work, demonstrate the ability to assure compliance with the above Indemnity provisions and these other risk management provisions.

6.9.4 INSURANCE REQUIREMENTS

Required Insurance Coverage

CONSULTANT shall procure and maintain for the duration of this Agreement the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to OWNER in order to protect OWNER against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by CONSULTANT :

<u>Coverage</u>	<u>Limits</u>
General Liability aggregate (Insurance Services Office Form CG 00 01)	\$1 million per occurrence, \$2 million or \$2 million combined single limit
Commercial Automobile Liability occurrence (Insurance Services Office Form CA 0001)	combined single, \$1 million per
Professional Liability aggregate	\$1 million per occurrence, \$3 million
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky. OWNER shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by OWNER.

- c. The General Liability Policy shall include a Products and Completed Operations endorsement or Premises and Operations Liability endorsement unless it is deemed not to apply by OWNER.
- d. The General Liability Policy shall have a Professional Liability endorsement (including Errors and Omissions) for any services performed pursuant to the contract, and/or a separate Professional Liability Policy shall be obtained unless it is deemed not to apply by OWNER.
- e. The Professional Liability policy shall be maintained for a minimum of three years beyond the completion date of the project, to the extent commercially available. If not commercially available, CONSULTANT shall notify OWNER and obtain similar insurance that is commercially available and acceptable to OWNER.
- f. OWNER shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.
- g. Said coverage shall be written by insurers acceptable to OWNER and shall be in a form acceptable to OWNER. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

6.9.5. RENEWALS

After insurance has been approved by OWNER, evidence of renewal of an expiring policy must be submitted to OWNER, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

6.9.6. VERIFICATION OF COVERAGE

CONSULTANT agrees to furnish OWNER with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide OWNER copies of all insurance policies, including all endorsements.

6.9.5. RIGHT TO REVIEW, AUDIT AND INSPECT

CONSULTANT understands and agrees that OWNER may review, audit and inspect any and all of its records and operations to insure compliance with these Insurance Requirements.

6.9.7. SAFETY AND LOSS CONTROL

CONSULTANT understands and agrees that OWNER is in no way responsible for the safety and property of CONSULTANT or its personnel. CONSULTANT shall comply with all applicable federal, state, and local safety standards related to the performance of its work or services under this Agreement and take reasonably necessary action to protect the life, health and safety and property of its personnel, the public, and OWNER in the locations and areas in which CONSULTANT is performing services under the Agreement.

6.9.8. DEFAULT

CONSULTANT understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default and that OWNER may elect at its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging CONSULTANT for any such insurance premiums purchased, or suspending or terminating the work.

SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, the CONSULTANT agrees as follows:

- 7.1. The CONSULTANT will not discriminate against any employee or application for employment because of race, color, religion, national origin, sex, age, or handicap. The 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. The 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.
- 7.2.1. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the 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 - SPECIAL PROVISIONS, EXHIBITS, AND SCHEDULES

- 8.1. This Agreement is subject to the following provisions.

- 8.1.1. Pursuant to subparagraph 3.4 of this Agreement, OWNER has assigned Charles H. Martin, P.E., Director of the Division of Water Quality (the "OWNER'S

Agent"), as the authorized agent of OWNER, to monitor, direct and review the performance of work of the CONSULTANT. Documents, data, reports, and all matters associated with carrying out this Agreement shall be addressed to the OWNER'S Agent or his designee. Questions by the CONSULTANT regarding interpretations of the terms, provisions and requirements under this Agreement shall be addressed to the OWNER'S Agent or his designee. The CONSULTANT shall look only to the OWNER'S Agent or his 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.

- 8.2.** This Agreement, together with the Incorporated Documents (Section 1.2) constitutes the entire Agreement between OWNER and CONSULTANT and supersedes all prior written or oral understandings. This Agreement and EXHIBITS A, B, C and D and any related schedules or documents may only be amended, supplemented, modified or canceled by a duly executed written instrument.
- 8.3.** NO THIRD PARTY RIGHTS. This agreement does not create a contractual relationship with or right of action in favor of a third party against either OWNER or CONSULTANT.
- 8.4.** UNENFORCEABLE TERMS/SURVIVABILITY. If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken. The provisions of Section 6 of this Agreement shall survive its termination.
- 8.5.** NON-WAIVER. The failure of either party to enforce any right reserved to it in this Agreement shall not be a waiver of any such right to which the party is entitled.

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

CONSULTANT:

BY: _____
JIM GRAY, MAYOR

BY: _____

ATTEST:

URBAN COUNTY COUNCIL CLERK
COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing Agreement was subscribed, sworn to and acknowledged before me by _____, as the duly authorized representative for and on behalf of _____, on this the _____ day of _____, 2012.

My commission expires: _____.

NOTARY PUBLIC