

Agreement

THIS AGREEMENT, made and entered into on this 4th day of March, 2014, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government pursuant to KRS Chapter 67A, and located at 200 East Main Street, Lexington, Fayette County, Kentucky 40507 (hereinafter referred to as "LFUCG" or "GOVERNMENT"), and **DREAMLAND SKATEPARKS, LLC**, whose address is 960 SE Highway 101, PMB 384, Lincoln City, Oregon 97367-2622, (hereinafter referred to as "CONTRACTOR").

1. Incorporated Documents

The following documents are incorporated by reference herein as if fully stated and are attached hereto as exhibits:

RFP #35-2013 - Exhibit "A" (the "RFP")

CONTRACTOR's Response dated December 6th, 2013 -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. 35-2013 (Exhibit "A").

More specifically, the Risk Management provisions, General Conditions, Prevailing Wage and Bond Requirements included in the RFP shall fully apply unless specifically modified as part of this Agreement.

2. Scope of Work

The Scope of Work includes, but is not limited to the CONTRACTOR providing design and construction services for the Berry Hill Skate Park as outlined in RFP #35-2013 Berry Hill Skate Park Design-Build Services ("Exhibit "A") and the CONTRACTOR's Response dated December 6th, 2013 ("Exhibit "B").

CONTRACTOR shall, consistent with applicable licensing laws, provide through qualified, licensed design professionals employed by CONTRACTOR, or procured from qualified, independent licensed design consultants, the necessary design services, including architectural, engineering and other professional services, for the preparation of the required drawings, specifications and other submittals to permit CONTRACTOR to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between LFUCG and any design or other consultants under contract to the CONTRACTOR.

3. Design Criteria Package Review

The CONTRACTOR shall verify and review all plans and shall notify the LFUCG's Project Manager, in writing, of all errors, omissions, conflicts and discrepancies found therein. Failure to discover or correct errors, conflicts or discrepancies shall not relieve the CONTRACTOR of full responsibility for unsatisfactory Work, faulty construction or improper operation resulting there from, or from rectifying such conditions at his own expense.

All schedules are given for the convenience of the CONTRACTOR and are not guaranteed to be complete. The CONTRACTOR shall assume all responsibility for the making of estimates of the size, kind, and quantity of materials and equipment included in the Work to be done under this Contract as well as all time estimates for sequencing and completing the Work.

Only the best general practice is to prevail and that only material and workmanship of the best quality is to be used.

4. Contract Time

The CONTRACTOR shall furnish all labor, materials, equipment, tools, services, and incidentals to complete all Work required by the Design Criteria at a rate of progress that will ensure completion of the Work within the Contract Time.

CONTRACTOR shall have two hundred forty (240) calendar days to achieve Substantial Completion from the date of the Notice to Proceed is issued. CONTRACTOR shall have an additional sixty (60) calendar days for Final Completion of the Contract. The Work shall commence within ten (10) calendar days of CONTRACTOR's receipt of the Notice to Proceed unless the parties mutually agree otherwise in writing.

5. Contract Price

LFUCG shall pay the CONTRACTOR in accordance with Terms and Conditions of the Contract the lump sum of Five Hundred Thousand dollars (\$500,000), subject to any adjustments in accordance with the Contract. Said sum shall cover all costs and fees incurred or required for the completion of the Project. Payments shall be made in accordance with paragraph 6, below.

6. Progress Payments

CONTRACTOR may make application for payment for Work completed during the Project(s) at intervals of not more than once a month or upon completion and Final Acceptance of the Work. All applications shall be submitted in triplicate and the CONTRACTOR shall only use LFUCG provided or approved Payment Application Form. Where the time frame for completion of the Work is less than or equal to one month or a Schedule of Values is not required, the CONTRACTOR shall submit the appropriate documentation as defined below. Supporting evidence to be included with any application for payment shall include, but is not limited to, an updated progress schedule as required by Supplemental Terms and Conditions and a partial or final release of liens or consent of Surety relative to the Work, which is the subject of the application for payment and any other information required by the LFUCG's Project Manager. Each application for payment shall be submitted in triplicate for approval. LFUCG shall make payment to CONTRACTOR within thirty (30) days after approval of CONTRACTOR's application for payment.

Five percent (5%) of all monies earned by CONTRACTOR shall be retained by

LFUCG until Final Acceptance by LFUCG. Any interest earned on retainage shall accrue

to the benefit of LFUCG. All requests for retainage reduction shall be in writing in a separate stand alone document. No retainage shall be applied to the design portion of the services with the exception of CA.

LFUCG may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

- I. Defective Work not remedied.
- II. Claims filed or reasonable evidence indicating probable filing of claims by other parties against CONTRACTOR or LFUCG because of CONTRACTOR's performance.
- III. Failure of CONTRACTOR to make payments properly to Subcontractor, Subconsultant, or for material or labor.
- IV. Liquidated damages and costs incurred by LFUCG and/or Consultant for extended construction administration.
- V. Failure of CONTRACTOR to provide any and all documents required by the Contract Documents.

LFUCG will pay, and the CONTRACTOR shall accept as full compensation for the Work, the sums specified in the CONTRACTOR's submittal to the Contract Documents, as accepted by LFUCG.

CONTRACTOR may be paid for materials or equipment purchased and stored at the Project(s) Site(s) or another location. Where a payment request is made for materials or equipment not incorporated in the Project(s), but delivered and suitably stored at the site or at some other location agreed upon in writing, the written documentation must be submitted at the time of request for payment. Payment shall be conditioned upon submission by the CONTRACTOR of paid invoices and an executed Material Purchased/Stored On-Premises form to establish LFUCG's title to such materials or equipment, or otherwise protect LFUCG's interest, including applicable insurance in the name of LFUCG and transportation to the site.

CONTRACTOR retains sole liability to replace such stored materials or equipment as a result of damage or loss for any reason

Requests for payment that do not include the updated Project Schedule and required submittals and/or reports will not be processed for payment.

7. Liquidated Damages

The CONTRACTOR is obligated and guarantees to complete the Project in the time set forth in the Contract Documents or any approved extension of time or shall be subject to liquidated damages of \$200.00 per day as follows. In the event of a delay in completion beyond the timeframe set forth in the Contract Documents for Substantial Completion or Final Completion, The CONTRACTOR will be notified of any approved exceptions or extensions. The total amount of liquidated damages shall not exceed the value of the applicable Contract Documents.

LFUCG shall have the right to deduct liquidated damages assessments from any payment due or which may thereafter become due to the CONTRACTOR under any contract the CONTRACTOR has with LFUCG. In case the amount, which may become due hereunder, shall be less than the amount of liquidated damages due LFUCG, the Design-Build Firm shall pay the difference upon demand by LFUCG. Should the CONTRACTOR fail to compensate LFUCG for any liquidated damages, LFUCG

shall consider this as a form of indebtedness and may deny any future Work under the Contract or any other LFUCG contract until such indebtedness is paid in full to LFUCG.

8. **Schedule of Values**

The CONTRACTOR must submit three copies of a Schedule of Values, which must be submitted within ten (10) calendar days of the issuance of the Notice of Award. The Schedule of Values shall indicate a complete breakdown of labor and material of all categories of Work on the Project. CONTRACTOR's overhead and profit should be as separate line items. Each line item shall be identified with the number and title of the major specification section or major components of the items.

The LFUCG's Project Manager may require further breakdown after review of the CONTRACTOR's submittal. LFUCG reserves the right to require such information from the CONTRACTOR as may be necessary to determine the accuracy of the Schedule of Values. The combined total value for mobilization under the Schedules of Values shall not exceed 5% of the value of the Contract.

9. **Project Schedules**

CONTRACTOR shall submit a proposed design-build Project schedule, with any sub-schedules of related activities that are essential to its progress, within ten (10) working days of the Notice of Award and such submittal shall be subject to the Project Manager's review, comment, and acceptance. Subsequent to such review of said schedule the CONTRACTOR shall establish said schedule as the baseline schedule. At the time of submission of schedules CONTRACTOR shall submit a hard copy as well as an electronic version.

The design build schedule shall be prepared in the form of a horizontal bar chart with separate horizontal bars for each design task, construction task in the critical path in chronological order. Provide horizontal time scale in weeks from the start of construction and identify the first work day of each month. Identify listings of any major installation milestones.

Content of Schedules; show or indicate the following:

1. Complete sequence of design by activity reflecting the Subconsultant responsible for the activity.
2. Complete sequence of construction by activity reflecting the CONTRACTOR or Subcontractor responsible for each activity
3. Dates for the beginning and completion of each major element of design and construction in no more than a two-week incremental scale.
4. Items of work that must be accomplished to achieve substantial completion.
 - a. Major disciplines or trades of work
 - b. Filter downtime
 - c. Time required for CONTRACTOR's submittals, fabrication and deliveries.
 - d. Time required by CONTRACTOR and LFUCG to review all submittals.
 - e. Time required by LFUCG to support any pre-operational and start-up testing.
 - f. Time required for the relocation of utilities, if required.
 - g. Activities performed by CONTRACTOR.
5. Percentage of completion for each item as of the date the schedule was prepared.
6. Dates for CONTRACTOR's submittals.

7. Dates for any required LFUCG-furnished materials or equipment.

In addition the CONTRACTOR shall provide:

1. A list of all long lead items and their anticipated dates of delivery (equipment, materials, etc.) Monthly updates shall reflect actual versus projected, and any revised projections
2. A projected dollar cash flow spend down for each month of construction. Monthly updates shall reflect any change orders as well as actual versus projected, and any revised projections.

All updates of schedules shall be tracked against the baseline schedule and shall be at a minimum submitted with each pay application together with any updates to the long lead items list and the dollar cash flow spend down.. An updated schedule against the baseline shall also be submitted upon execution of each change order that impacts the Contract Documents Time for completion. Failure to submit such schedules shall result in the rejection of any submitted payment application.

Subsequent to review of the initial schedule submission the CONTRACTOR shall establish the reviewed schedule as the "baseline schedule". CONTRACTOR shall then prepare and submit all updates to the schedules utilizing the tracking mode within Microsoft Project.

10. Release of Liens/Subcontractor's Statement of Satisfaction

The CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project(s) or not, will pass to LFUCG upon the receipt of such payment by the CONTRACTOR, free and clear of all liens, claims, security interests or encumbrances and that no Work, materials or equipment will have been acquired by the CONTRACTOR or by any other person performing Work at the site or furnishing materials and equipment for the Project(s), subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the CONTRACTOR or such other person.

The CONTRACTOR shall, beginning with the second request for payment, attach a Partial Release of Lien/Subcontractor, Subconsultant Statement of Satisfaction for each application for payment. Failure to submit such documentation may delay payments. LFUCG may, in its sole discretion withhold payments for Work performed by Subcontractor, Subconsultant where no release of lien has been submitted. The CONTRACTOR shall submit with the final payment request, for any Project(s) where Subcontractor, and/or Subconsultant have performed Work, a Final Release of Lien/Subcontractor, Subconsultant Statement of Satisfaction for each Subcontractor, Subconsultant marked as a final. Failure to submit such documentation will result in delay in payment or LFUCG withholding from the final payment such funds as necessary to satisfy any Subcontractor, and/or Subconsultant claims.

11. Progress Meetings

LFUCG shall conduct a pre-construction conference prior to the commencement of the Work. CONTRACTOR shall hold progress and coordination meetings as required by the LFUCG's Project Manager, to provide for the timely completion of the Work.

CONTRACTOR shall arrange and conduct regular bi-weekly job site Project status

meetings with the LFUCG's Project Manager. CONTRACTOR shall use the job site meetings as a tool for the pre-planning of Work and enforcing schedules, and for establishing procedures, responsibilities, and identification of authority for all parties to clearly understand. During these meetings, CONTRACTOR shall identify the party or parties responsible for following up on any problems, delay items or questions, and

Design- Build Firm shall note the action to be taken by such party or parties. CONTRACTOR shall revisit each pending item, including RFIs and Shop Drawing, at each subsequent meeting until resolution is achieved. CONTRACTOR shall attempt to obtain from all present any potential problems or delaying event known to them for appropriate attention and resolution.

The CONTRACTOR shall arrange for the participation of its Subcontractors, Subconsultants, and/or vendors when the Project Manager requires their presence.

The CONTRACTOR shall maintain minutes of the meeting and distribute copies of the minutes to all parties in attendance. The CONTRACTOR shall prepare and distribute to the LFUCG's Project Manager an updated two-week look-ahead schedule of construction activities and submittals.

12. Request for Information

The CONTRACTOR shall submit a Request for Information (RFI) where the CONTRACTOR believes that the Contract Document's specifications or drawings are unclear or conflict. All requests must be submitted in a manner that clearly identifies the drawing and/or specification section where clarification or interpretation is being requested. As part of the RFI, CONTRACTOR shall include its recommendation for resolution. LFUCG shall respond in writing.

13. Project Site Facilities

The CONTRACTOR shall arrange for all Project(s) site facilities as maybe necessary to enable the Project Managers to perform their respective duties and to accommodate any representatives of LFUCG which LFUCG may choose to have present at the Project(s).

CONTRACTOR's, Sub-CONTRACTOR's, supplier's personnel shall not use LFUCG restrooms that may be available at the Project(s) site without the prior consent of the Project Manager. The CONTRACTOR shall provide and maintain at his own expense, a sanitary condition. The CONTRACTOR, its employees or its Subcontractors or Subconsultants shall commit no public nuisance or use any facilities that have not been specifically provided for use by the CONTRACTOR.

There shall be adequate provisions made by the CONTRACTOR to ensure all disposable materials are properly disposed of and do not create a nuisance to LFUCG or the public.

The location of the temporary facilities shall be subject to the approval of the Project Manager or Consultant.

14. Temporary Facilities, Utilities, and Construction

CONTRACTOR is required to provide any necessary temporary utilities to the site, such as electric, water, and sanitary services to the site for new construction or additions to a facility. The CONTRACTOR shall make all arrangements with the local utility companies. The CONTRACTOR shall also be responsible for furnishing all materials and equipment necessary for the installation and maintenance of any temporary utilities. The LFUCG's Project Manager may authorize the use of existing utilities. Such decision will be made at the sole discretion of the Project Manager and LFUCG.

CONTRACTOR shall furnish, install and maintain temporary facilities required for construction, and shall remove them upon completion of the Work. All facilities shall comply with the respective federal, state and local codes and regulations and with utility company requirements. Materials for temporary facilities may be new or used, but must be adequate for the required usage, must not create unsafe conditions, and must not violate requirements of applicable codes and standards.

The CONTRACTOR shall be required to obtain all necessary permits required for any Project(s) site facilities and utilities. CONTRACTOR shall also be responsible to maintain such facilities in a safe and working condition. CONTRACTOR shall be responsible for payment for all fees and charges for the installation and use of all temporary facilities and utilities.

All such facilities and utilities remain the property of the CONTRACTOR and the Design-Build Firm shall be responsible for removal and disposal of such facilities prior to Final Acceptance.

Temporary fences: If, during the course of the Work, it is necessary to remove or disturb any fencing, the CONTRACTOR shall, at his own expense, provide a suitable temporary fence which shall be maintained until the permanent fence is replaced. The Project Manager will be solely responsible for the determination of the necessity for providing a temporary fence and the type of temporary fence to be used.

Responsibility for Temporary Structures: In accepting this Contract, the CONTRACTOR assumes full responsibility for the sufficiency and safety of all temporary structures or work and for any damage which may result from their failure or their improper construction, maintenance or operation and will indemnify and save harmless LFUCG from all claims, suits or actions and damages or costs of every description arising by reason of failure to comply with the above provisions.

15. Project Testing Services

If required, the CONTRACTOR shall provide and pay for all Project Testing Services to perform regulatory required testing, quality assurance, and quality control testing. The CONTRACTOR is also responsible for all re-testing where the Work or materials fail a test.

LFUCG at its sole discretion may conduct separate independent testing for verification purposes. In instances where LFUCG's testing does not verify the testing provided by the CONTRACTOR, the CONTRACTOR shall arrange for re-testing of the Work or replacement of the Work at its own cost. Where the CONTRACTOR has re-testing performed LFUCG's Project Manager shall be notified in advance of such testing. Should such testing confirm LFUCG's findings the CONTRACTOR shall replace or correct all Work necessary to ensure compliance with the Contract Documents. In such instances all re-testing, re-work, and delays are the sole responsibility of the CONTRACTOR. Any delays or costs to the CONTRACTOR for testing or re-work that may result shall not form the basis for any claim by the CONTRACTOR. CONTRACTOR shall be responsible for the costs associated with all testing by LFUCG where the Work is found to not be in compliance with the Contract Documents. Costs for such retests shall be deducted from pending invoices.

16. Security

The site where the Work is to be performed may not be a secure site and the public may have access to the site. The CONTRACTOR shall have sole responsibility for the security of all Work materials, tools, equipment and Work at the Project(s) site.

LFUCG shall not be liable for any damage or loss to such materials, tools, equipment and Work and the CONTRACTOR shall be responsible for the repair or replacement of all Work such materials, tools, and equipment.

17. Construction Signage

Where required by the Contract Documents the CONTRACTOR shall provide construction signage.

LFUCG shall provide the CONTRACTOR the wording and layout for the signs at the pre-construction conference. The CONTRACTOR shall furnish the two LFUCG signs at the Project(s) Site(s) as follows:

- The CONTRACTOR shall post appropriate construction site warning signs at the Work Site. Such signs shall be posted to warn pedestrian and vehicle traffic.
- The Project Manager and LFUCG shall approve the locations for all signage.

19. Lines and Grades

The CONTRACTOR shall, at its own expense, establish all working and construction lines and grades as required for the Project and shall be solely responsible for the accuracy thereof.

20. Progress Photos

Prior to commencement of the Work the CONTRACTOR will take digital photographs to document existing conditions. CONTRACTOR shall submit these photos on CD-ROM and printed copy with its first payment application. CONTRACTOR shall periodically take digital construction record photographs to document the progress, including final completion, of the Work and shall be submitted on CD-ROM and printed copy with each application for payment. All pictures must be digitally date and time stamped.

21. Assignment

CONTRACTOR may not assign this Agreement without the express advanced written consent of LFUCG.

22. Applicable Law.

This Agreement shall be interpreted under the laws of the Commonwealth of Kentucky. Jurisdiction and venue for any lawsuit shall be limited to Fayette County, Kentucky.

Design Responsibility

1. Design Services

All Professional Services shall be provided by firms licensed to perform such services in accordance with all applicable Local/State/Federal regulations/laws. CONTRACTOR shall be solely responsible for all aspects of the design of this Project and shall also be responsible for supervision and management of the firm(s) providing Professional Services under this Contract. Nothing contained in this Agreement shall create any contractual or business relationship between LFUCG and the Consultant. The CONTRACTOR acknowledges that Subconsultants are entirely under its or the Consultants direction, control, supervision, retention and/or discharge.

2. Subconsultants

All services provided by the Subconsultants shall be performed pursuant to appropriate written agreements between the Consultant and the Subconsultants, which shall contain provisions that preserve and protect the rights of LFUCG under this Contract. Nothing contained in this Contract shall create any contractual or business relationship between LFUCG and the Subconsultants. The Consultant acknowledges that Subconsultants are entirely under its direction, control, supervision, retention and/or discharge.

The CONTRACTOR shall not add, modify, or change the Consultant or any Subconsultant listed in Form A without prior written approval by the Director or designee, in response to a written request from the CONTRACTOR stating the reasons for any proposed substitution.

3. Ownership of Documents

All tracings, plans, drawings, specifications, maps, computer files, and/or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived there from, including all electronic digital copies will be considered works made for hire and will, based on incremental transfer wherein the above shall become the property of LFUCG upon payments made to the CONTRACTOR or termination of this Contract without restriction or limitation on their use, and will be made available, on request, to LFUCG at any time during the performance of such services and/or upon completion or termination of this Contract. CONTRACTOR shall not copyright any material and products or patent any invention developed under this Agreement. LFUCG shall have the right to visit the site for inspection of the Work and the products of Consultant at any time. The Consultant shall be permitted to retain copies, including reproducible copies, solely for information and reference in connection with LFUCG's use and occupancy of the Project.

4. Delivery upon Request or Cancellation

Failure of the CONTRACTOR to promptly deliver all such documents, both hard copy and digital, to the LFUCG's Project Manager or designee within ten (10) days of cancellation, or within ten (10) days of request by LFUCG, shall be just cause for LFUCG to withhold payment of any fees due CONTRACTOR until CONTRACTOR delivers all such documents. Consultant shall have no recourse from these requirements.

5. Error and Omission Issues

CONTRACTOR is solely responsible for the coordination of the drawings and specifications and is solely responsible for all costs resulting from any errors and/or omissions in the drawings and specifications.

6. CONTRACTOR's Key Staff

The parties acknowledge that CONTRACTOR was selected by LFUCG, in part, on the basis of qualifications of particular staff identified in CONTRACTOR's response to LFUCG's solicitation, hereinafter referred to as "Key Staff". CONTRACTOR shall ensure that Key Staff, including Consultant and Subconsultant Key Staff as noted by reference in CONTRACTOR's RFP Response (Exhibit "B") are available for Work hereunder as long as said Key Staff is in Design-Build or Consultant's employ. CONTRACTOR will obtain prior written acceptance of LFUCG to change Key Staff. CONTRACTOR shall provide LFUCG with such information as necessary to determine the suitability of proposed new Key Staff. LFUCG will act reasonably in evaluating Key Staff qualifications. Such acceptance shall not constitute any responsibility or liability for the individual's ability to perform.

7. Truth-In-Negotiation Certificate

By executing this Agreement the CONTRACTOR certifies that wage rates and other factual unit costs supporting the cost of the Project are accurate, complete, and current at the time of Notice to Proceed. The original Project price and any addition thereto will be adjusted to exclude any significant sums by which LFUCG determines the Contract Price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such price adjustments will be made within 1 year following the end of the Project.

8. Scope of Services

The CONTRACTOR agrees to provide comprehensive professional services in accordance with all applicable law and building and environmental regulations. CONTRACTOR shall furnish, as Basic Services, comprehensive professional services for the Projects including, but not limited to those described in Basic Services.

9. Basic Services

CONTRACTOR agrees to provide complete Professional Services as set forth in the tasks enumerated hereinafter, in accordance with the Commonwealth of Kentucky Building Code, latest edition, all federal and county Laws, Codes and Ordinances. CONTRACTOR shall maintain an adequate staff of qualified personnel on the Work at all times to ensure its performance as specified in the Contract.

CONTRACTOR shall submit at least one (1) electronic set of all documents and five (5) copies of documents required under this Article, without additional charge, for review and approval by LFUCG. CONTRACTOR shall not proceed with the next task of the design Work until the documents have been approved, in writing, by LFUCG, and an Authorization to Proceed with the next task has been issued by LFUCG.

These services, hereinafter referred to as "Basic Services" are summarized as follows:

DEVELOPMENT OF OBJECTIVES:

- I. CONTRACTOR shall confer with representatives of LFUCG, its Project Manager, and other stakeholders to develop several options for how the various elements of the project will be designed and constructed.
- II. CONTRACTOR shall confer with representatives of LFUCG, its Project Manager, and other stakeholders in order to comprehensively identify aspects of the completed facility program that may require further refinement to attain the requisite detail of design development required to begin the creation of Construction Documents. For clarity of scope, the items that need further development will be called Conceptuals and the remaining items will be called

- Designs.
- III. CONTRACTOR shall prepare written descriptions of the various options and shall participate in presentations to multiple groups explaining alternative options. Sufficient detail shall be provided to support the presentation materials. The acceptance of any option shall be at the sole discretion of LFUCG.
 - IV. CONTRACTOR shall hire the appropriate subconsultant to provide utility coordination services, which are not in-house. Such services shall include the location of all site structures including all utility structures and facilities as well as all underground utilities.

SCHEMATIC DESIGN:

Design Concept and Schematics Report

- I. Based on the approved development option the CONTRACTOR shall prepare and present four (4) copies, in writing and at an oral presentation if requested, for approval by LFUCG, a Design Concept and Schematics Report, comprising Schematic Design Studies, including an identification of any special requirement affecting the Project, a Statement of Probable Construction Cost, Project Development Schedule and review of Constructability Review reports.
- II. Schematic Design Studies consist of site plan(s), floor plans (where applicable), elevations, sections, and all other elements required by Design Criteria Professional or Project Manager to show the scale and relationship of the components and design concepts of the whole. The floor plans may be single-line diagrams. A simple perspective rendering or sketch, model or photograph thereof may be provided to further show the design concept.
- III. A Statement of Probable Construction Cost, prepared in Construction Standard Index (CSI) format, to include a summary of the estimated project cost and an evaluation of funding allocation. Such summary shall be in sufficient detail to identify the costs of each element and include a breakdown of the fees, general conditions and construction contingency. Such evaluation shall comprise a brief description of the basis for estimated costs per each element and similar project unit costs. Recommendations for reducing the scope of the Project in order to bring the estimated costs within allocated funds, in the event that the statement of Probable Construction Costs exceeds allocated funds by more than ten (10%) percent, the CONTRACTOR shall update its documentation, at no additional cost to LFUCG, to reflect this reduced scope. Any "Statement of Probable Construction Costs" prepared by Design-Build Firm represents a reasonable
- IV. Estimate of cost in Consultant's best judgment as a professional familiar with the local construction industry.
- V. The Project Development Schedule shall show the proposed completion date of each task of the Project through design, bidding, construction, and post construction services.
- VI. Constructability Review reports shall be conducted by LFUCG at design stages deemed necessary by the LFUCG's Project Manager. CONTRACTOR shall provide five additional deliverable plan sets for distribution, by LFUCG, to others for this purpose. There shall be an established deadline for review report submission back to LFUCG. CONTRACTOR shall provide written responses to all comments within two weeks and shall maintain files of all related review reports and response reports. If necessary, LFUCG may coordinate Constructability Review meetings with some or all of the reviewers with

CONTRACTOR present to discuss specific issues. In addition to the Constructability Review process mentioned above, LFUCG reserves the right to conduct a Peer Review of the project documents at any design stage. Cost of such a Peer Review would be borne by LFUCG. Any findings as a result of said Peer Review would be addressed by CONTRACTOR, and if requested by LFUCG, would be incorporated into the design documents, at no additional cost to LFUCG and no extension of time to the schedule.

DESIGN DEVELOPMENT:

From the approved Schematic Design documents, CONTRACTOR shall prepare and present four (4) copies in writing, and at oral presentations, if requested, for approval by LFUCG and the Design Criteria Professional, separate Design Development Documents, updated Project Development Schedules, updated Statements of Probable Construction Costs and a review of Constructability Review reports.

- I. The Design Development Documents shall consist of drawings (site plans, floor plans, elevations, and sections, 3-D representation in the form of renderings or model), outline specifications, and other documents.
- II. Design Development consists of continued development and expansion of architectural and/or civil Schematic Design Documents to establish the final scope, relationships, forms, size, and appearance of each element through:
 1. Plan sections and elevations
 2. Typical construction details
 3. Final materials selection
 4. Construction phasing plan
- III. The updated Development Schedules shall show the proposed completion dates of each milestone of the Project through design, bidding, construction and proposed date of occupancy. CONTRACTOR will also detail all long lead procurement items and architecturally significant equipment that will need to be purchased prior to the completion of Construction Documents.
- IV. Provide updated Statements of Probable Construction Cost. If either statement of Probable Construction Cost exceeds allocated funds by more than ten (10%) percent, CONTRACTOR shall prepare recommendations for reducing the scope of that particular Project in order to bring the estimated costs within allocated funds.

Design-

 - i. Build Firm shall update its documentation, at no additional cost to LFUCG, to reflect this reduced scope.
- V. Constructability Review reports.

10. Basis of Design

It is imperative that LFUCG understands the implications of design decisions made during the design process. Especially in the early stages of design, it is important that the CONTRACTOR Firm provide insights into the implications of a given choice, e.g. materials, building skin, mechanical systems, etc. To achieve this CONTRACTOR shall develop basis of design reports for key systems. These reports are first due during the initial stages of design and provide the basis for LFUCG's acceptance of design submittals.

Basis of Design Reports are required at the following design milestones:

- Initial proposal submittal
- 50% Preliminary Design
- 100% Preliminary Design
- 50% Construction Documents
- 100% Construction Documents

11. Code Analysis Reports and Plans

Provide a narrative discussion and summary of building code issues, impacts and restrictions particular to this Project. The outline shall include a written report and diagrammatic plan drawings delineating design criteria, occupancy, construction type, etc. The analysis shall be updated for each design phase.

12. Project Timeline

Final timeline to be provided by the CONTRACTOR as noted in the RFP response.

13. Additional Design Services

Additional design services shall be handled as a Change Order to the Contract. Additional Design Services shall be for the provision of Professional Services requested by LFUCG that were not included in the approved design documents or within the Basic Services contained in the Contract. Upon request of LFUCG the CONTRACTOR will prepare and submit a Change Order Proposal, which shall include the deliverables and costs.

CONSTRUCTION DOCUMENTS

CONTRACTOR shall produce 50%, 90% and Final Construction Documents (100%) for review and approval by LFUCG, which shall include the following:

1. A Drawing Cover Sheet listing an index of all number of drawings by each discipline. Drawings not included in the 50%, 90% and 100% review shall be noted. CONTRACTOR shall attach an index of all anticipated drawing sheets necessary to fully define the Project.
2. The updated Project Development Schedule to include an outline of major construction milestone activities and the recommended construction duration period in calendar days.
3. An updated Statement of Probable Construction Cost in CSI format.
4. A Project Specifications index and Project Manual with at least 50%, 90% and 100% of the Specifications completed.
5. CONTRACTOR shall submit the special conditions separate from the technical specifications.
6. CONTRACTOR shall not proceed with further construction document development until approval of the previously submitted documents is received in writing from LFUCG. Approval by LFUCG shall be for progress only and does not relieve CONTRACTOR of its responsibilities and liabilities relative to code compliance and to other covenants contained in this Contract. CONTRACTOR shall resolve all questions indicated on the documents and make all changes to the documents necessary in response to the review commentary. The previously submitted documents review (check) set shall be returned to LFUCG upon submission of subsequent submittal and CONTRACTOR shall provide an appropriate response to all review comments noted on these previously submitted documents.
7. CONTRACTOR shall submit four (4) full size copies of the drawings and specifications, and one digital copy in .pdf format, plot, and .dwg formats.
8. CONTRACTOR shall prepare for written approval by LFUCG, Final Construction Documents setting forth all design drawings and specifications needed to comprise a fully biddable, permittable, constructible Project.

ADMINISTRATION OF THE CONSTRUCTION CONTRACT

1. The Construction Phase will begin upon commencement of construction and will end when the CONTRACTOR has provided to LFUCG all post construction services, including documents, As-Built drawings, CONTRACTOR's record drawings, warranties, guarantees, operational manuals, and Certificate(s) of Occupancy have been delivered to LFUCG and LFUCG approves the final payment to the CONTRACTOR. During this period, the CONTRACTOR shall provide administration of the construction contract as provided by this Contract, and as provided by law.
2. The Project Manager, as the representative of LFUCG during the Construction Phase, shall advise and consult with LFUCG and shall have the authority to act on behalf of LFUCG to the extent provided in the General Conditions and the Supplementary Conditions of the construction contract and their agreement with LFUCG.
3. LFUCG or its, respective representatives shall visit the site to conduct field observations, at a minimum on a weekly basis, and at all key construction events; to ascertain the progress of the Project and shall visit the site as appropriate to conduct field inspections to ascertain the progress of the Project and determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Consultant shall provide any site visits necessary for certification if required by the authorities having jurisdiction. Threshold inspection shall be provided by the CONTRACTOR at no additional cost to LFUCG. LFUCG or its representatives shall report on the progress the Work, including any defects and deficiencies that may be observed in the Work. The Consultant will be responsible for writing minutes of all meetings and field inspections report, as well as the distribution of the minutes. Consultant and Subconsultants will not be held responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work.
4. Based on observations at the site and consultation with LFUCG, the Consultant shall determine the amount due the CONTRACTOR based on the approved schedule of values and shall recommend approval of such amount as appropriate. This recommendation shall constitute a representation by the Consultant to LFUCG that, to the best of the Consultant's knowledge, information and belief, the Work has progressed to the point indicated and that, the quality of the Work is in accordance with the Contract and the CONTRACTOR is entitled to amount stated on the requisition subject to:
 - a. a detailed evaluation of the Work for conformance with the contract upon substantial completion;
 - b. the results of any subsequent tests required by the contract;
 - c. minor deviations from the contract correctable prior to completion;
 - d. any specific qualifications stated in the payment certificate and further that the CONTRACTOR is entitled to payment in the amount agreed upon at a requisition site meeting or as stated on the requisition.
5. Prior to recommending payment to the CONTRACTOR, the project manager will prepare a written statement to LFUCG on the status of the Work relative to the Construction Schedule, which shall be attached to the CONTRACTOR's payment application. Such statement shall be prepared immediately following the requisition field meeting.
6. The LFUCG's project manager shall be the interpreter of the requirements of the Contract

Documents and the judge of the performance thereunder. The project manager shall render interpretations necessary for the proper execution or progress of the Work upon written request of either LFUCG or the CONTRACTOR.

7. The LFUCG's project manager shall have the authority to recommend rejection of Work, which does not conform to the Contract Documents. Whenever, in his/her reasonable opinion, the project manager considers it necessary or advisable to insure compliance with the Contract Documents, the project manager will have the authority to recommend special inspection or testing of any Work deemed to be not in accordance with the Contract, whether or not such Work has been fabricated and/or delivered to the Project, or installed and completed.
8. The LFUCG's project manager shall promptly review and approve, reject or take action on shop drawings, samples, RFIs and other submissions of the CONTRACTOR. Changes or substitutions to the construction documents shall not be authorized without concurrence of the LFUCG's Project Manager and/or. The project manager shall upon receipt of shop drawings, samples, RFI's or other submittals by the CONTRACTOR, timely review and return the shop drawings or submittals to the CONTRACTOR with comments indicating either approval or disapproval.
9. The LFUCG's project manager shall examine the Work upon receipt of the CONTRACTOR's request for substantial completion inspection of the Project and shall, prior to occupancy by LFUCG, recommend execution of a "Certificate of Acceptance for Substantial Completion" after first ascertaining that the Project is substantially complete in accordance with the contract requirements. The project manager shall in conjunction with other representatives of LFUCG, and the CONTRACTOR prepare a punch list of any defects and discrepancies in the Work required to be corrected by the CONTRACTOR in accordance with all applicable codes/regulations. Upon satisfactory completion of the punch list the project manager shall recommend execution of a "Certificate of Final Acceptance" and final payment to the CONTRACTOR. Upon satisfactory completion of all items on the punch list all necessary closeout documentation shall be submitted by the CONTRACTOR, including but not limited to all guarantees, operating and maintenance manuals for equipment, releases of liens/claims and such other documents and certificates as may be required by applicable codes, law, and the Contract before final acceptance shall be issued to the CONTRACTOR.
10. The LFUCG's project manager shall review the CONTRACTOR's "as built" drawings and submit them to LFUCG upon approval. The CONTRACTOR is responsible for preparing the "as built" drawings.
11. The CONTRACTOR shall furnish to LFUCG the original documents, including drawings, revised to "as-built" conditions. In preparing the "Record Set" documents any certification required under this Contract including the contents of "as-built" documents is conditioned upon the accuracy of the information and documents provided by the CONTRACTOR. The original documents as well as the "Record Set" shall become the property of LFUCG. A reproducible set of all other final documents will be furnished to LFUCG free of charge by the CONTRACTOR. The CONTRACTOR shall furnish to LFUCG one complete set of "Record Set Drawings", in Auto CADD or such other format acceptable to LFUCG.
12. The CONTRACTOR shall furnish to LFUCG a simplified site plan reflecting "as-built" conditions with graphic scale and north arrow. Two sets of drawings shall be furnished on 24" x 36" sheets and one electronic copy.

Schedule of Values

Design Fees

Phase	Fee %	Fee
Pre-Design Phase	%	\$ 4,000.00
Concept Schematic Design	%	\$ 4,000.00
Advanced Schematic Design	%	\$ 3,000.00
Design Development	%	\$ 6,000.00
50% Construction Documents	%	\$ 10,000.00
90% Construction Documents	%	\$ 6,000.00
100% Construction Documents	%	\$ 5,000.00
Permitting	%	\$ 4,000.00
Construction Administration	%	\$ 1,000.00
Substantial Completion Deliverables	%	\$ 0
Final Completion Deliverables	%	\$ 0
Post Occupancy Inspection & Report	%	\$ 0
Not to Exceed Allowance for Reimbursable Expenses (if applicable)	%	\$ 500.00
Total Design Fees (Not to Exceed)	100%	\$ 43,500.00

Note: Fee % indicates proportion of lump sum of Total Design Fees

Phase	Item Amount	Sub-Total/Total Fee
Guaranteed Maximum Cost of the Work	\$?	?
SUB-TOTAL		\$ — ?
Guaranteed Maximum Staffing Costs	\$ 150,000.	
Guaranteed Maximum General Conditions	\$ 231,500	
SUB-TOTAL	381,500	\$ 381,500.00
Overhead & Profit	\$ 60,000.00	
SUB-TOTAL		\$ 60,000.00
Bond & Insurance this is part of the General Conditions	\$ 15,000.00	
Guaranteed Maximum Construction Price		\$ 456,500.00

Costs

Construction

Guaranteed Maximum Price (GMP)	500,000.00
--------------------------------	------------

Our **GUARANTEED MAXIMUM PRICE** includes the total cost for the Work specified in this solicitation, consisting of furnishing all materials, labor, equipment, supervision, mobilization, overhead & profit required, in accordance with the Bid Specifications.

Lump Sum: \$ 500,000.00

five hundred thousand dollars.

Written Amount

Contract Execution Form

THIS Contract made this March day of 4th in the year 2014 by and between Lexington Fayette Urban County Government, hereinafter called the "LFUCG," and **Dreamland Skateparks, LLC**


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

WITNESS/ATTEST

Dreamland Skateparks, LLC

Signature

Signature



Danye/Scott Co-Owner Dreamland Skateparks
Print Name, Title *Print Name, Title of Authorized Officer or Official*

ATTEST:

DESIGN-BUILD FIRM (Affirm
DESIGN-BUILD FIRM Seal, if
available)

ATTEST:

LFUCG

LFUCG Clerk

HOUSTON SPECIALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 20 10 07 04

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS
SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Additional Insured Person(s) Or Organizations (s):	Location(s) Of Covered Operations
Only those parties required to be named as an Additional Insured in a written contract with the Named Insured under this policy, entered into prior to the "loss" or "occurrence".	ALL
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf, in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. This insurance does not apply to "bodily injury", "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.