

## **PROFESSIONAL SERVICES AGREEMENT**

**THIS IS AN AGREEMENT** made as of \_\_\_\_\_, 2020 between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**OWNER**) and Machinex Technologies, Inc. (**PROFESSIONAL**). **OWNER** intends to proceed with Material Recovery Facility Design Build Fiber Line Upgrade in Lexington, Kentucky as described in the attached Request for Proposal document. The services are to include professional design, installation, testing and training services for the city as contemplated in the **OWNER**'s Request for Proposal No. 14-2020. The services are hereinafter referred to as the Project.

**OWNER** and **PROFESSIONAL** in consideration of their mutual covenants herein agree in respect of the performance of professional planning and analysis services by **PROFESSIONAL** and the payment for those services by **OWNER** as set forth below.

**PROFESSIONAL** was selected by **OWNER** based upon its response to the Request for Proposal No. 14-2020.

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

#### **1.1. General**

**PROFESSIONAL** shall perform professional services as hereinafter stated in accordance with the incorporated documents.

#### **1.2 Incorporated Documents**

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

1. EXHIBIT A - RFP No. 14-2020 MRF Design Build Fiber Line Upgrade
2. EXHIBIT B - **PROFESSIONAL**'s revised Proposal No. 3420026-1
3. EXHIBIT C – Certificate of Insurance and Evidence of Insurability

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 B and then EXHIBIT A.

#### **1.3 Project Phase**

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

1. Notify the **OWNER** in writing of its authorized representative who shall act as Project Manager and liaison representative between the **PROFESSIONAL** and the **OWNER**.
2. On the basis of "Selected Proposer Requirements" in the "Request for Proposal", attached in Exhibit "A", submit final design, update project schedule timeline, obtain all on-site work documentation, and prepare/perform

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

This Agreement (consisting of pages 1 to 9 inclusive), together with the Exhibits and schedules identified above constitutes the entire Agreement between **OWNER** and **PROFESSIONAL** and supersedes all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

The General Condition provisions of RFP No. 14-2020 are incorporated herein by reference as if fully stated.

Construction and Progress Monitoring. As part of this Agreement, **PROFESSIONAL** acknowledges that the general design of the MRF and the specifications of the Design Build Fiber Line Upgrade are sufficient to enable the **PROFESSIONAL** to satisfactorily meet its responsibilities under this Agreement. The **OWNER** intends to purchase and install the equipment for the Design Build Fiber Line Upgrade.

Coordination of Efforts. The **PROFESSIONAL**, as project manager for the Design Build Fiber Line Upgrade per Exhibit B, and the **OWNER** acknowledge the need for close coordination of activities and responsibilities pertaining to the transition of the existing facility to the new equipment. The **PROFESSIONAL** will develop a path, with deadline dates and responsibilities, outlining the installation schedule of new equipment. The **PROFESSIONAL** shall provide to the **OWNER**, for approval, a project plan including a project schedule with major milestones showing equipment installation, testing events, and start-up dates. The project plan shall be provided to the **OWNER** at least sixty (60) days prior to commencement of the Design Build Fiber Line Upgrade work.

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

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

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

**OWNER shall:**

- 3.1. Provide criteria and information as to **OWNER'S** requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- 3.2. Assist **PROFESSIONAL** by placing at his disposal available information pertinent to the Project.
- 3.3. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **PROFESSIONAL**, and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of **PROFESSIONAL**.
- 3.4. Designate in writing a person to act as **OWNER'S** representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define **OWNER'S** policies and decisions with respect to materials, equipment, elements and systems pertinent to **PROFESSIONAL'S** services.
- 3.5. Give written notice to **PROFESSIONAL** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **PROFESSIONAL'S** services, or any defect in the work of Contractor(s).
- 3.6. Furnish or direct **PROFESSIONAL** to provide necessary Additional Services as stipulated in Section Two (2) of this Agreement or other services as required.

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

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

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

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

**SECTION 5 - PAYMENTS TO PROFESSIONAL**

**5.1 Methods of Payment for Services of PROFESSIONAL**

**5.1.1 For Basic Services.**

All Lump Sum Pricing shall include all direct labor and supervision necessary to complete the item in a manner that meets or exceeds the customer's satisfaction. It shall also include 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 allowance, equipment, materials, profit and all other costs used on the job. The negotiated cost of services is represented below.

Cost (Total Cost of Services Below)

**\$4,200,000**

Milestones

- 1) 25% Upon General Layout Approval – (\$1,050,000)
- 2) 20% 2 Months Prior to Shipment – (\$840,000)
- 3) 10% Prior to Shipment – (\$420,000)
- 4) 25% Upon Last Equipment Arrival on Site (\$1,050,000)
- 5) 10% Upon Substantial Completion of Installation – (\$420,000)
- 6) 5% Upon Completion of Installation(not to exceed 30 days) – (\$210,000)
- 7) 5% Upon Customer Approval – (\$210,000)

**5.2. Times of Payment.**

**5.2.1. PROFESSIONAL** shall submit to **OWNER** invoices at milestone completions. The milestones are the basis for Basic Services rendered. The invoices will be based upon milestones actually completed at the time of billing and are subject to approval by the **OWNER**. **OWNER** shall pay **PROFESSIONAL'S** invoice within thirty (30) days of receipt.

**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 **PROFESSIONAL**, the **PROFESSIONAL** 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 the **OWNER** is to the total amount of work provided for herein, as determined by mutual agreement between the **OWNER** and the **PROFESSIONAL**.

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

**5.3.3.** In the event the **PROFESSIONAL** shall terminate the Agreement because of gross delays caused by the **OWNER**, the **PROFESSIONAL** 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 either party upon ten (10) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, provided the non-terminating party fails to cure such default within the thirty (30) day period.

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

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

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

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

**6.3.2.** In performing the services hereunder, the **PROFESSIONAL** and its **PROFESSIONALS**, 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 **PROFESSIONAL** shall be acting as an independent contractor. The **PROFESSIONAL** shall not hold itself out as, nor claim to be, an officer or employee of **OWNER** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **OWNER**. The **PROFESSIONAL** shall be solely responsible for any claims for wages or compensation by **PROFESSIONAL'S** employees, agents and representatives, including **PROFESSIONALS**, 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 Statues.

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

**6.4.1.** **PROFESSIONAL** 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. **PROFESSIONAL** shall not assign any interest, obligation or benefit in this Agreement. **PROFESSIONAL** shall not assign any interest, obligation or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent of **OWNER**.

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

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

## **6.5. Disputes.**

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

## **6.6. PROFESSIONAL's Performance.**

**PROFESSIONAL** shall use those efforts which a skilled, competent, experienced, and prudent person or organization would use to perform and complete the requirements of this Contract in a timely and professional manner conforming to the standards and quality generally recognized and accepted within the profession throughout the United States. **PROFESSIONAL** shall furnish all necessary labor, tools, equipment, and supplies to perform the required services.

The **OWNER** will decide all questions which may arise as to the quality and acceptability of any work performed under the Contract. If, in the opinion of the **OWNER's** authorized representative, performance becomes unsatisfactory, the **OWNER** shall notify the **PROFESSIONAL**.

The **PROFESSIONAL** will have thirty (30) days from that time to correct any specific instance of unsatisfactory performance. In the event the unsatisfactory performance is not corrected within the time specified above, the **OWNER** shall have the immediate right to complete the work to its satisfaction and shall deduct the cost to cover from any balances due to become due to the **PROFESSIONAL**. Repeated incidences of unsatisfactory performance may result in cancellation of the Contract for default.

The **PROFESSIONAL** shall be responsible for the accuracy of all work and shall make any necessary revisions or corrections resulting from errors and/or omissions on the part of the **PROFESSIONAL**, without additional compensation. By submission of equipment manufacture and installation, commissioning and acceptance testing, staff training, and Drawings and Specifications to the **OWNER**, the **PROFESSIONAL** has made a statement

that, to the best of its belief and knowledge, the information is accurate. Failure on the part of **PROFESSIONAL** to provide the expected level of accuracy may be grounds for the **OWNER** to disqualify **PROFESSIONAL** from consideration for future **PROFESSIONAL** service agreements.

#### **6.7. Security Clause.**

The **PROFESSIONAL** certifies that 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**.

#### **6.8. Access to Records.**

The **PROFESSIONALS** and his sub-**PROFESSIONALS** 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 the **OWNER**, and copies thereof shall be furnished if requested. Failure to maintain such records for three (3) years after the date of final payment may be grounds for the **OWNER** to disqualify the **PROFESSIONAL** from consideration for future **PROFESSIONAL** service agreements.

#### **6.9. Required Risk Management Provisions.**

The Risk Management Provisions of RFP No. 14-2020 are incorporated herein by reference as if fully stated. Copies of the required Certificates of Insurance shall be provided to **OWNER** as required therein.

### **SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY**

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

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

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

### **SECTION 8 - SPECIAL PROVISIONS**

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

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

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

**OWNER (LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT):**

Signature: \_\_\_\_\_  
Linda Gorton, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
ABIGAIL ALLAN, COUNCIL CLERK

**PROFESSIONAL (Machinex Technologies, Inc.):**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

COMMONWEALTH OF KENTUCKY  
COUNTY OF ( \_\_\_\_\_ )



The foregoing instrument was subscribed, sworn to and acknowledged before me by \_\_\_\_\_ as \_\_\_\_\_ for  
and on behalf of \_\_\_\_\_, on this the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC, STATE AT LARGE, KY

EXHIBIT A

RFP No. 14-2020 MRF Design Build Fiber Line Upgrade





EXHIBIT B

PROFESSIONAL's revised Proposal No. 3420026-1

EXHIBIT C

Certificate of Insurance and Evidence of Insurability



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No. 8292283-000006

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint Aubley Bock, Kelley S. Brown, Jennifer Collett, Leigh Ann Cordle, Courtney Cowan, Kelli J. Cox, Stephen R. DeVore, Pamela J. Dunn, Camron Eghert, Stephen R. Geat, Laura Hall, Sarah Keith, Matthew Maim, Lisa McFarland, Kathy Perkins, Rusty D. Poppelmeier, Kathleen Salowitz, Robert Sasta, Jennifer Schmitt, Michael Ulrich, Shelley M. Wagner, Abigail L. Xanders

all of the city of Cincinnati state of Ohio each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 3rd day of October, 2019.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

State of PENNSYLVANIA
County of MONTGOMERY

On this 3rd day of October, 2019 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows.

ARTICLE IV - OFFICERS: Section 12. Power of Attorney

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed

I, Renee C. Ulewelyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 25th day of Aug, 2019



By: Renee C. Ulewelyn, Assistant Secretary

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9 AM and 4 PM EST