

RESOLUTION NO. 15 - 2019

Moved by:



A Resolution authorizing the City of Harrisburg to negotiate and enter into a professional services agreement with Thomas J. McLane and Associates, Inc. to develop the “Chutes and Ladders” playground project in Reservoir Park.

WHEREAS, the 2017 master site plan for Reservoir Park includes a design concept for a playground based on the boardgame “Chutes and Ladders”; and

WHEREAS, the City developed a Scope of Work for the project and sought proposals from various professional services firms; and

WHEREAS, based on a review of the submitted proposals, the City seeks to enter into a professional services agreement with Thomas J. McLane and Associates, Inc. to perform the required services to fully develop the “Chutes and Ladders” playground concept; and

WHEREAS, the proposal submitted by Thomas J. McLane and Associates, Inc. is attached hereto as Exhibit “A”; and

WHEREAS, the professional services agreement in an amount not to exceed \$49,520.00 is attached hereto as Exhibit “B”; and

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF HARRISBURG, that the professional services agreement with Thomas J. McLane and Associates, Inc. is approved.

BE IT FURTHER RESOLVED that the Mayor, City Controller and other appropriate City officials are authorized and directed to take all steps necessary to further effectuate the purpose of this Resolution.

I second this resolution

 - Aysha Green

Passed the City Council March 26, 2019

Wanda R. Williams
President of City Council

Attest [Signature]
City Clerk

YEAS	NAYS
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Exhibit “A”

THOMAS J. McLANE AND ASSOCIATES, INC.

*Landscape Architecture
Environmental Science
Recreation Planning*

**601 Stafford Avenue
Scranton, PA 18505**

*Phone: (570) 347-3668
Fax: (570) 341-5413
Email: info@mclaneassociates.com
Web: www.mclaneassociates.com*

June 20, 2018

The City of Harrisburg
Bureau of Parks & recreation
10 North 2nd Street
Suite 401
Harrisburg Pa, 17101

Attn: Mr. Kevin Sanders, Director
Re: Landscape Architectural Professional Services Proposal
Reservoir Park Shoots & Ladders Playground Project

Mr. Sanders:

I have prepared the following proposal for landscape architectural services for the above referenced project:

PROJECT OVERVIEW

The City of Harrisburg has identified the Reservoir Park playground renovation as a priority project for 2018. The master site plan released in 2017 includes several concept plans. The preferred design mimics the classic children's board game of Chutes and Ladders. The Owner is requesting the Engineering or Architectural firm provide plan design, engineering and project and bid management services to develop the project from concept into a project manual and contract drawings services for public bidding. This firm will also provide bid and post bid services to the City.

SCOPE OF SERVICES

Thomas J. McLane and Associates, Inc. will work closely with the City for all tasks as further defined in the scope tasks as follows:

TASK 1 – PROJECT SITE INVESTIGATIONS PHASE

Thomas J. McLane and Associates, Inc. Landscape architects, will provide site design to fully develop the Chutes and Ladders concept. These investigations will consist of site visits to identify critical site features.

Task Items:

1. On-Site Kickoff/Project Scope Meeting
2. Review of Existing Subsurface Information: Review subsurface soils information, if available, provided by Owner, for the site and incorporate recommendations into the design.
3. Topographic Design: Provide design services to define the existing topography and site features to determine site constraints, controls, and to facilitate design.
4. Review Existing Sidewalks and Access Points: Review existing sidewalks to determine condition of existing connection points and accessibility compliance.
5. Review Existing Drainage Facilities: Review existing drainage facilities for suitability and to determine condition of existing connection points and storm water conveyance facilities.

Deliverables:

- Meeting Minutes for Kickoff/Project Scope Meeting
- Further deliverables for Task 1 will be incorporated into deliverables detailed under Task 2

TASK 2 – DESIGN DEVELOPMENT PHASE

Thomas J. McLane and Associates, Inc. will provide civil design documents suitable for construction. Design plans are expected to include cover sheet, construction notes, existing site conditions, demolition plan, site plan, grading plan, civil details and additional sheets as necessary to convey the design intent.

Task Items:

1. Develop Design Alternatives
2. Project Status Meeting No. 1 – Alternative concepts
3. On-Site Utility Coordination Meeting No. 1
4. Project Status Meeting No. 2 – Prepare for public meeting No. 1
5. Public Meeting No. 1 – Discuss alternatives
6. Finalize Design Concept – Submit 30% plans and determine permitting requirements

Deliverables:

Submittals of plan drawings will be limited as follows:

- Meeting Minutes
- 30% Complete Design Documents (Plans)

TASK 3 – CONSTRUCTION DOCUMENT PHASE

Thomas J. McLane and Associates, Inc. will work with the city to draft and release final construction documents reflecting the design plan as agreed.

Task Items:

1. Project Status Meeting No. 3 – Review final design concepts

2. Public Meeting No. 2 – Announce design
3. Submit 90% construction documents
4. Project Status Meeting No. 4 – After 90% submission, prepare for bidding
5. Submit 100% construction document

Deliverables:

- Meeting Minutes
- 90% Construction documents to include technical specification, plans, civil opinion of probable construction cost
- 100% Final construction documents stamped and signed by a registered engineer to include technical Specifications, stamped plans, and civil opinion of probably construction cost
- Native CAD Files

TASK 4 – CONSTRUCTION PRE-BID AND BID SERVICES

Thomas J. McLane and Associates, Inc. will work with the city to assist with the bid process, pre-bid meeting and the bid opening.

The work items are listed below:

1. On-Site Pre-bid Meeting/Conference
2. Assist City with bid posting
3. Respond to bidder's questions

Deliverables:

- Meeting Minutes

TASK 5 – CONSTRUCTION SERVICES

Thomas J. McLane and Associates, Inc. will work with the city to assist with the bid process, pre-bid meeting and the bid opening.

The work items are listed below:

1. On-Site Construction Startup Meeting
2. Attendance of up to 3 construction status meetings
3. Review of submittals, RFIs, and applications for payment

Deliverables:

- Meeting Minutes
- Punch List

ASSUMPTIONS AND EXCLUSIONS

The following assumptions and exclusions apply to this project:

- This scope does not include anything not specifically described above;
- Construction staking;

- Owner will prepare the bidding contract documents;
- This scope does not include electrical engineering design for site improvements;
- This scope does not include structural engineering design for site improvements;
- This scope does not include any boundary surveying including record map and deed Research;
- This scope of services does not include geotechnical investigations, reporting, materials testing, or compaction testing;
- This scope of services does not include environmental studies, seismic studies, etc.
- Any applications, permits, or related fees are prepared for and paid by Owner.

COMPENSATION

Thomas J. McLane and Associates, Inc. shall be compensated for services on time and materials basis not to exceed **\$49,520.00**

Task 1 Fee: \$ 8,640.00
 Task 2 Fee: \$13,800.00
 Task 3 Fee: \$14,080.00
 Task 4 Fee: \$ 6,320.00
 Task 5 Fee: \$ 6,680.00

Hourly Rate Fee Schedule will be billed as follows:

Title I Senior Landscape Architect (152 HRS)	\$105/HR
Title II Designer Project Manager (226 HRS)	\$90/HR
Title III Computer Graphic/CADD Tech (146 HRS)	\$70/HR

Thank you for the opportunity to submit this proposal. Should you have any questions or require any additional information please contact my office.

Respectfully submitted,



Thomas J. McLane, R.L.A., ASLA

E x h i b i t “B”

ADDENDUM

THOMAS J. MCLANE AND ASSOCIATES, INC. & CITY OF HARRISBURG TERMS & CONDITIONS

The attached Proposal, Agreement, or Contract ("This Agreement" or "Agreement") is hereby amended by this Addendum to include the following terms and provisions as if fully set forth in the Agreement. Notwithstanding any conflicting or contrary terms in this Agreement, the terms and conditions of this Addendum shall control over those in the Agreement.

1. TERM. This Agreement shall become effective on the date the last party hereto signs the Agreement, as indicated by the date next to that party's signature ("Effective Date").

2. TERMINATION. The CITY shall have the following termination rights:

Termination for Convenience. The CITY shall have the right to suspend or terminate this Agreement and/or a Purchase Order (without penalty) for its convenience at any time without cause and **with immediate effect** by written notice to CONTRACTOR.

Termination for Loss of Grant Funds. If all or any portion of CITY'S payment obligations under this Agreement are grant funded (whether via a private, local government, state and/or federal grant program or any combination thereof), the CITY shall have the right to suspend or terminate this Agreement and/or a Purchase Order (without penalty) with immediate effect by written notice to CONTRACTOR due to expiration, suspension or termination of the grant program(s).

Termination for Non-Appropriation of Funds. The CITY's obligation to make payments during any CITY fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (CITY, State and/or Federal) are not appropriated or otherwise made available to support continuation of performance of this Agreement in a subsequent fiscal period, the CITY shall have the right to terminate this Agreement and/or a Purchase Order (without penalty) with immediate effect by written notice to CONTRACTOR.

Termination for Cause. The CITY shall have the right to suspend or terminate this Agreement and/or a Purchase Order with immediate effect for cause due to CONTRACTOR'S breach of any of the terms and conditions of this Agreement or CONTRACTOR'S bankruptcy or insolvency.

In the event of Termination pursuant to this Paragraph 2:

- A. CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
- B. CITY shall pay CONTRACTOR the reasonable value of Services satisfactorily rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is

necessary for CITY to determine the reasonable value of the Services satisfactorily rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

3. CONTRACTOR'S BUSINESS. CONTRACTOR represents that they are in the business of providing services of the kind stated in this Agreement on a routine basis to various clients and it is expressly understood between the parties that services rendered under this Agreement shall not be considered CONTRACTOR's sole source of work, revenue, or income. It is further understood that this Paragraph constitutes a material condition of this Agreement and that the CITY would not have entered into this Agreement and agreed to pay for services of CONTRACTOR without said representation and understanding.

4. SCOPE OF SERVICES. See Agreement.

5. PAYMENT FOR SERVICES. See Agreement.

6. ADDITIONAL PAYMENT TERMS. A Purchase Order Number and Notice to Proceed issued by the CITY is required prior to commencing work. The Purchase Order date (order date) is required to precede the invoice or application for payment for checks to be issued. **Submission of invoicing or payment applications prior to receipt of a Purchase Order will result in severe payment processing delays or non-payment of services, without liability upon the CITY.** If the CONTRACTOR has not received payment within (45) calendar days of CITY'S receipt of invoicing or application of payment, the CONTRACTOR may assess interest on the undisputed portions of invoicing or payment applications computed at the rate of one-half of one percent per month (6% per annum).

7. ADDITIONAL WORK. Additional work or services that exceed the Scope of Services in this Agreement must be approved by the parties in writing (which shall include the agreed upon compensation) prior to CONTRACTOR performing any additional work.

8. RELATIONSHIP OF PARTIES. The parties intend that an independent CONTRACTOR relationship will be created by this Agreement and it is understood that the CONTRACTOR will not be an employee of the CITY. The CONTRACTOR shall act in the capacity of an independent CONTRACTOR with respect to the CITY. The CONTRACTOR shall not be, nor represent himself or herself as being, an employee or agent of the CITY, and shall not be, nor represent himself or herself as being authorized to bind the CITY. The CONTRACTOR shall not have the status of an employee of the CITY and shall not be eligible to participate in any employee benefit plans, pension plans, group insurance plans, paid vacation/sick leave programs, or any other employee benefits. CITY shall not provide social security, unemployment compensation, disability insurance, worker's compensation or similar coverage, nor any statutory benefits, to the CONTRACTOR. The CONTRACTOR shall be solely responsible for all taxes, withholdings, and other similar statutory obligations, including, but not limited to workers' compensation Insurance and CONTRACTOR agrees to indemnify and hold the CITY harmless in the event the CITY is required to pay any of the same on behalf of the CONTRACTOR.

9. WORK PRODUCT OWNERSHIP. Any plans, drawings, blue prints, documents, works, ideas, discoveries, inventions, products, or other information, whether or not copyrightable, trade markable, patentable (collectively, the "Work Product") developed in whole or in part by the CONTRACTOR in connection with the Services shall automatically become the exclusive property of the CITY. No license or conveyance of any such rights to the CONTRACTOR is granted or implied under this Agreement. CONTRACTOR, without further

consideration, agrees to sign all documents necessary to confirm or perfect the exclusive ownership of the CITY to the Work Product. The terms of this Paragraph shall survive termination of this Agreement.

10. CONFIDENTIALITY. CONTRACTOR during the term of this Agreement may have access to proprietary, private and/or otherwise confidential information ("Confidential Information") of the CITY, including its elected and appointed officials, employees, CONTRACTORS and agents. Confidential Information shall mean all non-public information including without limitation, all social security, tax, financial, investment, operational, personnel, and statistical information of the CITY. CONTRACTOR will not at any time or in any manner, either directly or indirectly, use for the personal benefit of the CONTRACTOR, or divulge, disclose, or communicate in any manner any Confidential Information. CONTRACTOR will protect such information and treat the Confidential Information as strictly confidential. This provision shall continue to be effective after the termination of this Agreement. Upon termination of this Agreement, CONTRACTOR will return to CITY all Confidential Information, whether physical or electronic, and other items that were used, created, or controlled by the CONTRACTOR during the term of this Agreement.

11. PUBLICITY. Neither CONTRACTOR nor any subcontractor shall use the name of the CITY of Harrisburg, publish any information contained in or derived from the CITY's records, or quote the opinion of any CITY employee in any advertising, publicity, endorsement or testimonial, without the prior written approval of the CITY. The terms of this Paragraph shall survive termination of this Agreement.

12. INSURANCE. The parties agree that for the duration of this Agreement the CONTRACTOR shall maintain Primary/Non-Contributory insurance coverage, which shall include all terms, conditions and amounts required by the CITY.

Coverage shall be demonstrated through a current Certificate of Insurance provided to the CITY no later than the time of execution of this Agreement, a copy of which shall be attached hereto, incorporated herein by reference and marked as Exhibit "A;" or by any replacement or updated post-execution Certificate that may be required from time to time by the CITY. The Certificate shall state that CONTRACTOR's insurance is Primary/Non-Contributory, name the CITY of Harrisburg as an Additional Insured and contain a provision requiring 30 days' notice prior to cancellation. All deductibles are the sole responsibility of Contractor (and its subcontractors and consultants) to pay and/or indemnify.

13. INDEMNIFICATION. CONTRACTOR agrees to indemnify, hold harmless, and defend CITY and its agents, employees, directors, and elected and appointed officials from and against any and all claims (including Worker's Compensation Claims), damages, losses and expenses, including but not limited to court costs and reasonable attorneys' fees, for which CITY may be held liable of whatsoever kind or nature, including but not limited to injury (including death) to any person including the CITY's employees and damages to any property of whatsoever kind or nature, arising out of or in any manner connected with the services to be performed under this Agreement by CONTRACTOR, its subcontractor, or any individual or legal entity working on behalf of or under CONTRACTOR's supervision or in any way connected with the use, misuse, maintenance, operation, or failure of any machinery or equipment (regardless of whether such machinery or equipment was furnished, rented, or loaned by CITY), whether due in whole or part to any act, omission, or negligence of CONTRACTOR, its subcontractor, or any individual or legal entity working on behalf of or under CONTRACTOR's supervision. CONTRACTOR shall not be responsible for any claims, damages, losses or expenses arising out of the CITY's negligence. The terms of this Paragraph shall survive termination of this Agreement.

14. LIMITATION OF LIABILITY: In no event shall CITY be liable to CONTRACTOR, its employees, agents, subcontractors or any third party, for any indirect, incidental, consequential, special or exemplary damages, whether in an action of contract, negligence, strict liability or other tortuous action, arising out of this Agreement. Both Parties recognize that this Agreement reflects a reasonable allocation of risks and that such allocation is a significant inducement to provide the services described in this Agreement to the CITY.

15. NO CONFLICTS. CONTRACTOR hereby represents and warrants to CITY that its execution and performance of this Agreement does not and will not breach any other agreement and does not require the consent of any other person or entity. CONTRACTOR hereby represents and warrants to CITY that there is no relationship that would create a conflict of interest with the CITY under applicable law. The CONTRACTOR will not be prevented or restricted by virtue of providing the services under this Agreement from providing services to other entities or individuals.

16. MERCANTILE LICENSE. If applicable, CONTRACTOR shall comply with Chapter 5-715 of the Codified Ordinances of the CITY of Harrisburg which requires all persons, firms, companies and corporations engaging in business within the CITY of Harrisburg to obtain a Mercantile License and pay the mercantile tax.

17. SUBCONTRACTORS. CONTRACTOR agrees to not subcontract any portion of the Services without prior authorization from the CITY, which authorization shall not be unreasonably withheld.

18. ASSIGNMENT. CONTRACTOR shall not assign this Agreement in whole or in part nor delegate any duties, without the prior written consent of the CITY. Such consent shall not be unreasonably withheld. Any assignment consented to by the CITY shall be evidenced by a written assignment agreement executed by CONTRACTOR and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the original Agreement and to assume the duties, obligations, and responsibilities being assigned.

19. THIRD PARTY BENEFICIARY. Nothing in this Agreement is intended to confer third-party beneficiary status on any other person or entity to enforce the terms of this Agreement.

20. RECITALS. Any recitals are incorporated into the terms of this Agreement as if fully set forth therein.

21. ENTIRE AGREEMENT. This Agreement constitutes the entire contract between the parties. All terms and conditions contained in any other writings previously executed by the parties regarding the matters contemplated herein shall be deemed to be merged herein and superseded hereby. No modification of the Agreement shall be deemed effective unless in writing and signed by the parties hereto.

22. WAIVER OF BREACH. The waiver by CITY of a breach of any provision of this Agreement by CONTRACTOR shall not operate or be construed as a waiver of any subsequent breach by CONTRACTOR.

23. DELAY/FORCE MAJURE. CITY shall not be liable for any delays resulting from acts of God, acts of third parties, orders of any kind of the government of the United States of America or of the Commonwealth of Pennsylvania or any of their departments, agencies, political subdivisions or officials, or any civil or military authority, equipment failures,

strikes, severe weather conditions, fires, riots, wars, earthquakes, equipment or facility shortages or any other causes beyond its reasonable control.

24. SEVERABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

25. SURVIVAL OF TERMS. The terms and conditions of this Agreement that by their sense and context are intended to survive termination hereof shall so survive, including without limitation the sections relating to indemnification.

26. APPLICABLE LAW & JURISDICTION. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflict of law provisions thereof. Each party hereto consents to the exclusive jurisdiction of the state courts of Pennsylvania situate in the County of Dauphin, Pennsylvania or in the United States District Court for the Middle District of Pennsylvania for any litigation that may arise out of this Agreement and each party hereto waives any objection based on *forum non conveniens* or any other objection to such venue. The United Nations Convention on Contracts for Sale of Goods shall not apply.

CONTRACTOR:

Thomas J. McLane and Associates, Inc.

By: _____ Date: _____
Thomas J. McLane, R.L.A., A.S.L.A.

Title: _____

CITY:

City of Harrisburg

By: _____ Date: _____
Eric Papenfuse, Mayor

By: _____ Date: _____
Charlie DeBrunner, Controller

Approved as to Form and Legality:

By: _____ Date: _____
Law Bureau

INTER

OFFICE

MEMO

To: HARRISBURG CITY COUNCIL
From: Kirk Petroski, City Clerk
LEGISLATIVE APPROVAL FORM

Date:

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2019 RESOLUTION NO. -2019

THE ABOVE LISTED ITEM WAS WRITTEN AND PREPARED FOR FINAL INTRODUCTION AT THE HARRISBURG CITY SOLICITOR'S OFFICE ON:

Nyanni E. Baldeca
Sr. Deputy City Solicitor

3-11-2019
Date

Requested by Department/Bureau: Parks n' Rec

Department/Bureau Contact Person: Kevin Sanders

For Action on or before:

The attached was received in the Office of the City Clerk for introduction on
3/12/19

Received by: *Chanderkumar*

Date: 3/8/2019