

## ENGINEERING SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of July 27, 2023 between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (OWNER) and Banks Engineering (CONSULTANT). OWNER intends to proceed with the Armstrong Mill Shared Use Path Project as described in the attached "Scope of Services" document (Attachment 1). The services are to include surveying, preliminary and final design, and preparation of complete plans and specifications for the Armstrong Mill Shared Use Path Project. The services are hereinafter referred to as the Project.

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

CONSULTANT shall provide professional consulting services for OWNER in all phases of the Project to which this Agreement applies, serve as OWNER'S professional engineering representative for the Project as set forth below and shall give professional consultation and advice to OWNER during the performance of services hereunder.

### SECTION 1 - BASIC SERVICES OF CONSULTANT

#### 1.1. General

CONSULTANT shall perform professional services as hereinafter stated that include customary civil, geotechnical, structural, and traffic engineering services; and customary surveying services incidental thereto.

#### 1.2. Data Collection and Preliminary Design Phase

After written authorization to proceed with the Data Collection and Preliminary Design Phase, CONSULTANT shall:

- 1.2.1. Notify the OWNER in writing of its authorized representative who shall act as Project engineer and liaison representative between the CONSULTANT and the OWNER.
- 1.2.2. Meet with OWNER to discuss the project requirements and proposed Scope of Work, and to conduct a project site visit.
- 1.2.3. On the basis of the "Scope of Services", review available GIS, mapping, PVA and related documents; conduct field and boundary surveys; and prepare a Preliminary Design Technical Memorandum. The latter shall include preliminary plans and a preliminary opinion of construction costs, accompanied by separate cost opinions for utility relocation and total right-of-way/easement acquisition.
- 1.2.4. Furnish up to five (5) copies (total TBD) of the above preliminary design documents and present them in person to OWNER. After OWNER'S detailed review, attend conference with OWNER to discuss OWNER'S comments.

- 1.2.5. Furnish one (1) copy of the above preliminary drawings to each of the local utility companies.
- 1.2.6. Furnish one (1) copy of the above preliminary drawings to the Kentucky Transportation Cabinet.

### **1.3. Final Design Phase**

After written authorization to proceed with the Final Design Phase, **CONSULTANT** shall:

- 1.3.1. On the basis of the approved preliminary design documents and the preliminary opinion of construction cost, prepare final drawings and specifications consistent with the "Scope of Services", to show the character and extent of the Project.
- 1.3.2. Prepare such documents and design data as may be required to apply for approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and obtain such approvals by negotiations with appropriate authorities.
- 1.3.3. Advise **OWNER** of any adjustments to the latest opinion of construction cost resulting from changes in the project extent and/or design requirements, or in changes to unit costs. Furnish a revised opinion of construction cost based on the Drawings and Specifications.
- 1.3.4. The **OWNER** shall prepare contract agreement forms, general conditions, bid forms, invitations to bid and instructions to bidders, and other related documents. **CONSULTANT** shall prepare for review and approval any special conditions applicable to the project.
- 1.3.5. Furnish up to five (5) copies (total TBD) of the above documents and present them in person to **OWNER**. After **OWNER'S** detailed review, attend conference with **OWNER** to discuss **OWNER'S** comments.
- 1.3.6. Furnish one (1) copy of the Final Drawings to each of the local utility companies.
- 1.3.7. Furnish one (1) copy of the Final Drawings to the Kentucky Transportation Cabinet.

### **1.4. Easement and Right-of-Way Acquisition**

After written authorization to proceed with Easement and Right-of-Way Acquisition, **CONSULTANT** shall:

- 1.4.1. Prepare plats and legal descriptions as required for acquisition of right-of-way consistent with the "Scope of Services".
- 1.4.2. Prepare exhibits and legal descriptions as required for acquisition of temporary and permanent easements consistent with the "Scope of Services".
- 1.4.3. Set corner pins (or offsets) as necessary to define the physical limits of all properties which must be acquired in fee simple consistent with the "Scope of Services".

Note: Negotiations with property owners for acquisitions of easements and right-of-way will be performed by LFUCG personnel.

### **1.5. Bidding or Negotiating Phase**

The **Owner** shall lead the Bidding or Negotiation Phase. During Bidding, the **CONSULTANT** shall be available to address any questions that arise concerning the accuracy or intent of his work and perform services as outlined in the "Scope of Services".

### **1.6. Construction Phase**

The **OWNER** shall lead construction project management of the Construction Phase. During Construction, the **CONSULTANT** shall be available to address any questions that arise concerning the accuracy or intent of his work and perform services as listed in the "Scope of Services". Furthermore, the **OWNER** may require construction inspection services by the **CONSULTANT**, per Section 2.2 of this Agreement.

## **SECTION 2 - EXTRA WORK BY CONSULTANT**

- 2.1.** The **OWNER** may desire to have the **CONSULTANT** perform work or render services in connection with this Project other than provided by the expressed intent of this Agreement. Such work shall be considered as "Extra Work", subject to a 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 **CONSULTANT** shall make such revisions as directed, in writing, by the **OWNER**. This work shall be considered as "Extra Work" and shall be paid as such.
- 2.2.** Extra Work may include the furnishing of a construction inspector by the **CONSULTANT**. Such decision will be made by the **OWNER** prior to bid letting. Depending on the funding source, pricing shall be based on the KYTC pre-approved rate for the applicable employee classification, or on the **CONSULTANTS'S** standard rate for the applicable employee classification. In all instances, the inspector shall comply with the requirements of the KYTC LPA Guide, Chapter IX, and with **OWNER** standard construction inspection procedures.
- 2.3.** All "Extra Work" is subject to prior written authorization of **OWNER** and necessary appropriations made by the Urban County Council.

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

### **OWNER shall:**

- 3.1.** Provide criteria and information as to **OWNER'S** requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.

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

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

- 4.1. Time is of the essence. See Attachment 1 Scope of Services, 12. Schedule and Completion (attached) for the detailed project schedule.
- 4.2. The provisions of this Section Four (4) and the various rates of compensation for **CONSULTANT'S** services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion.

If delays result by reason of acts of the **OWNER** or approving agencies, which are beyond the control of the **CONSULTANT**, an extension of time for such delay will be considered. If delays occur, the **CONSULTANT** shall within 30 days from the date of the delay apply in writing to the **OWNER** for an extension of time for such reasonable period as may be mutually agreed upon between the parties, and if approved, the Project schedule shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of the **OWNER** of any of its rights in the Agreement. Section 6.5, 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 CONSULTANT**

## **5.1 Methods of Payment for Services of CONSULTANT**

### **5.1.1 For Basic Services.**

OWNER shall pay CONSULTANT for Basic Services rendered a fee not exceeding one hundred ninety-nine thousand three hundred twenty-five dollars (\$199,325.00).

### **5.1.2. For Extra Work.**

"Extra Work" shall be paid for by the OWNER on the basis of a fixed fee, the amount of which shall be determined by negotiation. The OWNER shall have the right to negotiate alternate methods of payment for "Extra Work" if the OWNER determines that the fixed fee basis is not feasible. In the event the OWNER and the CONSULTANT are unable to agree upon the amount of payment for "Extra Work", then the amount of such payment shall be determined as set forth in Section 6.5, "DISPUTES" of this Agreement.

## **5.2 Times of Payment.**

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

## **5.3 Other Provisions Concerning Payments.**

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

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

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

## **SECTION 6 - GENERAL CONSIDERATIONS**

### **6.1. Termination**

**6.1.1.** The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) 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.

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

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

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

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

- 6.3.1. The **CONSULTANT** shall familiarize himself with and shall at all times comply with all federal, state and local laws, ordinances, and regulations which in any manner affect the services of this Agreement.
- 6.3.2. In performing the services hereunder, the **CONSULTANT** and its sub-**CONSULTANTS**, employees, agents and representatives shall not be deemed or construed to be employees of **OWNER** in any manner whatsoever. Except as otherwise provided in this Agreement, the **CONSULTANT** shall be acting as an independent contractor. The **CONSULTANT** shall not hold itself out as, nor claim to be, an officer or employee of **OWNER** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **OWNER**. The **CONSULTANT** shall be solely responsible for any claims for wages or compensation by **CONSULTANT'S** employees, agents and representatives, including sub-**CONSULTANTS**, and shall save and hold **OWNER** harmless therefrom.
- 6.3.3. The parties hereto agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes.

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

- 6.4.1. **CONSULTANT** binds itself and his partners, successors, executors, administrators, assigns and legal representatives to this Agreement in respect to all covenants, agreements and obligations of this Agreement. **CONSULTANT** shall not assign any interest, obligation or benefit in this Agreement, nor transfer any interest in the same, whether by assignment or novation, without prior written consent of **OWNER**.
- 6.4.2. The **CONSULTANT** shall not subcontract more than fifty percent (50%) of the work, based upon dollar value, to be provided under this Agreement. The **CONSULTANT** shall obtain written approval prior to subletting or assigning any services contained in this Agreement, and consent to sublet or assign any part of this Agreement shall not be construed to relieve the **CONSULTANT** of any responsibility for compliance with the provisions of this Agreement.

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

**6.5. Disputes.**

Except as otherwise provided in this Agreement, any dispute concerning the amount of payment due the **CONSULTANT** or any dispute concerning any question of fact of any act to be performed under this Agreement, which is not disposed of by agreement between the Urban County Engineer's Office and the **CONSULTANT**, shall be submitted to the Commissioner, Department of Planning, Preservation and Development, 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 **CONSULTANT** shall proceed diligently with the performance of the Agreement in accordance with the directions of the **OWNER**.

**6.6. Accuracy of CONSULTANT'S Work.**

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

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

**6.7. Security Clause.**

The **CONSULTANT** certifies that he shall not at any time release or divulge any information concerning the services covered by this Agreement to any person or any public or private organization except the **OWNER** without prior approval of the **OWNER**.

**6.8. Access to Records.**

The **CONSULTANTS** and his sub-**CONSULTANTS** shall maintain all books, documents, papers, and accounting records, and make such materials available at their respective offices at all reasonable times during the 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 **CONSULTANT** from consideration for future **CONSULTANT** engineering contracts.

## **6.9. Risk Management Provisions, Insurance and Indemnification**

### **6.9.1. Definitions**

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

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

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

### **6.9.2. Indemnification and Hold Harmless Provision**

- a. It is understood and agreed by the parties that **CONSULTANT** hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of **CONSULTANT** under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.
- b. **CONSULTANT** shall indemnify, save, hold harmless and defend **OWNER** from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney’s fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by **CONSULTANT**’s performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the **CONSULTANT**; and (b) not caused solely by the active negligence or willful misconduct of **OWNER**.
- c. Notwithstanding, the foregoing, with respect to any professional services performed by **CONSULTANT** hereunder (and to the fullest extent permitted by law), **CONSULTANT** shall indemnify, save, hold harmless and defend **OWNER** from and against any and all liability, damages and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney’s fees, for any damage due to death or injury to any person or injury to any property (including the loss of use resulting therefrom) to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of **CONSULTANT** in the performance of this agreement.



- d. In the event **OWNER** is alleged to be liable based upon the above, **CONSULTANT** shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by **OWNER**, which approval shall not be unreasonably withheld.
- e. These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.

**6.9.3. Financial Responsibility**

The **CONSULTANT** understands and agrees that the **CONSULTANT** shall, prior to final acceptance of the **CONSULTANT'S** proposal and the commencement of any work; demonstrate the ability to assure compliance with the Indemnity Agreement and other provisions of Section 6.9 of this Agreement.

**6.9.4. Insurance Requirements**

**6.9.4.1 Required Insurance Coverage**

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

**Coverage**

**Limits**

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

The policies above shall contain the following conditions:

- a. Policy shall be obtained unless it is deemed not to apply by **OWNER**.
- b. The Professional Liability policy shall be maintained for a minimum of three years beyond the completion date of the contract, to the extent commercially

available. If not commercially available, **CONSULTANT** shall notify **OWNER** and obtain similar insurance that is commercially available and acceptable to **OWNER**, unless **OWNER** waives requirement.

- c. **OWNER** shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.
- d. Said coverage shall be written by insurers acceptable to **OWNER** and shall be in a form acceptable to **OWNER**. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

#### **6.9.4.2. Renewals**

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

#### **6.9.4.3. Deductibles and Self-Insured Programs**

Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by Lexington-Fayette Urban County Government's Division of Risk Management, upon review of evidence of **CONSULTANT'S** financial capacity to respond to claims. Any such programs or retentions must provide **OWNER** with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If **CONSULTANT** satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, **CONSULTANT** agrees to provide Lexington-Fayette Urban County Government, Division of Risk Management, the following data prior to the final acceptance of bid and the commencement of any work:

- a. Latest audited financial statement, including auditor's notes.
- b. Any records of any self-insured trust fund plan or policy and related accounting statements.
- c. Actuarial funding reports or retained losses.
- d. Risk Management Manual or a description of the self-insurance and risk management program.
- e. A claim loss run summary for the previous five (5) years.
- f. Self-Insured Associations will be considered.

#### **6.9.4.4. Verification of Coverage**

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

#### **6.9.4.5. Right to Review, Audit and Inspect**

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

**6.9.5 Safety and Loss Control**

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

**6.9.6 Default**

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

**6.10 Resident Services During Construction.**

The **OWNER** will furnish a Resident Project Inspector.

**SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY**

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

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

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

**SECTION 8 - SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES**

- 8.1. This Agreement is subject to the following provisions.
- 8.1.1. Limits of Liability, as described in Section 6.9.2., shall be ~~\$4,000,000.00~~.
  - 8.1.2. Pursuant to subparagraph 3.4 of this Agreement, **OWNER** has assigned Jake Stephens, PE, Municipal Engineer Sr., of the Division of Engineering, (the "**OWNER'S** Agent"), as the authorized agent of **OWNER**, to monitor, direct and review the performance of work of the **CONSULTANT**. Documents, data, reports and all matters associated with carrying out this Agreement shall be addressed to the **OWNER'S** Agent or his designee. Questions by the **CONSULTANT** regarding interpretations of the terms, provisions and requirements under this Agreement shall be addressed to the **OWNER'S** Agent or his designee. The **CONSULTANT** shall look only to the **OWNER'S** Agent or his designee for direction in its performance under this Agreement; no other direction shall be binding upon **OWNER**. **OWNER** shall respond to written requests by **CONSULTANT** within thirty (30) days.
- 8.2. The following Exhibits are attached to and made a part of this Agreement:
- 8.2.1 Attachment 1 "Armstrong Mill Shared Use Path Project – Scope of Services" consisting of ten (10) pages, plus four (4) page map attachments.
  - 8.2.2 Attachment 2 "Request for Qualifications" consisting of fifty-three (53) pages and attachments.
  - 8.2.3 Attachment 3 "Fee Proposal" consisting of six (6) pages.
  - 8.2.4 Attachment 4 "Certificate of Insurance" consisting of two (2) pages.
- 8.3. This Agreement (consisting of pages 1 to 13 inclusive), together with the Exhibits and schedules identified above constitutes the entire Agreement between **OWNER** and **CONSULTANT** and supersedes all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument.
- 8.3. **NO THIRD PARTY RIGHTS.** This agreement does not create a contractual relationship with or right of action in favor of a third party against either **OWNER** or **CONSULTANT**.
- 8.4 **UNENFORCEABLE TERMS/SURVIVABILITY.** If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken. The provisions of Section 6 of this Agreement shall survive its termination.
- 8.5. **NON-WAIVER.** The failure of either party to enforce any right reserved to it in this Agreement shall not be a waiver of any such right to which the party is entitled.

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

OWNER:

LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT  
200 East Main St.  
Lexington, KY 40507

CONSULTANT:

BANKS ENGINEERING, INC.  
1211 Jessamine Station Rd.  
Nicholasville, KY 40356

BY: *Linda Gorton*  
LINDA GORTON, MAYOR

BY: *John B. Steinmetz*  
JOHN STEINMETZ, SR. ENGINEER

ATTEST:

*Maackenzie Jock*  
URBAN COUNTY COUNCIL CLERK  
COMMONWEALTH OF KENTUCKY  
COUNTY OF FAYETTE

The foregoing Agreement was subscribed, sworn to and acknowledged before me by  
*John Steinmetz*, as the duly authorized representative for and on  
behalf of *Banks Engineering*, on this the *29* day of *June*, 2023.  
My commission expires: *2-14-24*.



MICHELLE M. GIFFORD  
NOTARY PUBLIC  
STATE AT LARGE  
KENTUCKY  
MY COMMISSION EXPIRES *2-14-24*  
NOTARY ID# *2778*

*Michelle M. Gifford*  
NOTARY PUBLIC