

AGREEMENT

THIS AGREEMENT, made on the _____ day of _____, 2016, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government existing pursuant to KRS Chapter 67A, hereinafter called “GOVERNMENT” and **AECOM Technical Services, Inc. (DBA AECOM)**, located at 500 West Jefferson Street, Suite 1600, Louisville, Kentucky 40202” hereinafter called “CONSULTANT.”

WHEREAS, the GOVERNMENT issued a Request For Proposal (RFP) #47-2015, Program Management Services –Town Branch Commons (Exhibit A); and

WHEREAS, the CONSULTANT submitted its response (Exhibit B) to RFP #47-2015; and

WHEREAS, the GOVERNMENT has determined that CONSULTANT’s response is the most qualified to meet the requirements in RFP #47-2015;

NOW, THEREFORE, the GOVERNMENT and CONSULTANT, in consideration of their mutual covenants herein, AGREE to the tasks, associated hours, and payments described in Work Orders one through six (Exhibit C).

WITNESSETH: That the CONSULTANT and the GOVERNMENT, in consideration of the aforementioned, hereby agree to the following:

1.0 SCOPE OF WORK

1.1 The CONSULTANT shall perform program management services as originally requested in Exhibit A and further detailed in Exhibit B and Exhibit C. All terms and provisions stated in Exhibit A, Exhibit B, and Exhibit C shall be incorporated herein by reference as if fully stated. To the extent of any conflict between or among the documents, the terms of this Agreement shall take precedence followed by Exhibit C, followed by Exhibit A, followed by Exhibit B.

1.2 In addition to any deliverables required to satisfy the requirements set forth in Exhibit A and Exhibit C, the CONSULTANT will provide a monthly report of all activities to the GOVERNMENT PROJECT MANAGER. Reports may be submitted electronically.

1.3 The CONSULTANT shall perform work in accordance with applicable Federal and State laws and regulations including all of Title 49 United States Code (USC), Title 23 United States Code (USC), 49 Code of Federal Regulations, and 23 Code of Federal Regulations.

- 1.4 All documents, prepared by the CONSULTANT pursuant to this Agreement shall be delivered to and become the property of the GOVERNMENT. The GOVERNMENT shall have the right to reuse same without restriction or limitation, but without liability or legal exposure to the CONSULTANT. All databases created by the CONSULTANT shall be transferred to the GOVERNMENT, in their original database form, at the end of this AGREEMENT and or request by the Government.

2.0 INCORPORATED DOCUMENTS

- 2.1 Exhibit A – Request For Proposal (RFP) #47-2015, Program Management Services –Town Branch Commons.
- 2.2 Exhibit B – The “response” document titled “AECOM, Program Management Services: Town Branch Commons, Request for Proposal #47-2015”.
- 2.3 Exhibit C – Six separate Work Orders clarifying the tasks issued in RFP #47-2015, outlining the negotiated hours and payment schedule for each task.

3.0 PERIOD OF PERFORMANCE

- 3.1 The period of performance authorized by the GOVERNMENT for the proper execution of this AGREEMENT is approximately nine months from the date specified in the Notice to Proceed, though final payments for deliverables will not be paid until the Government receives and accepts said deliverables.
- 3.2 The period of services for any Work Order may extend beyond nine months if mutually agreed by both parties. However, in no circumstance, regardless of duration, may the total cost of this contract exceed \$679,922.

4.0 GENERAL SERVICES

General Services outlined in Exhibit A are incorporated herein by reference as if fully stated.

5.0 RISK MANAGEMENT PROVISIONS INSURANCE AND INDEMNIFICATION

5.1 Indemnification and Hold Harmless Provision

Indemnification and Hold Harmless Provision outlined in Exhibit A are incorporated herein by reference as if fully stated, except for Paragraph Two (2) which shall be stricken and superseded by the following:

“Consultant shall indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter “LFUCG”) 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 from the negligent acts, errors or omissions or willful misconduct of the Consultant; and (b) not caused by the active negligence or willful misconduct of LFUCG.”

5.1 Financial Responsibility

Financial Responsibility outlined in Exhibit A are incorporated herein by reference as if fully stated.

5.2 Insurance Requirements

Insurance Requirements outlined in Exhibit A are incorporated herein by reference as if fully stated.

6.0 PAYMENTS TO CONSULTANT

Payment for services under this agreement will be made on time and expense basis subject to the following requirements:

6.1 Time of Payment

CONSULTANT shall submit monthly statements for work completed. GOVERNMENT shall respond to CONSULTANT’s monthly statements within thirty (30) days, either denying payment or making payments.

6.2 Other Provisions Concerning Payments.

- 6.2.1.** All invoices shall reflect the work performed in accordance with Exhibit C and the corresponding amount due based on the budget allotted for each task.
- 6.2.2** In the event the Agreement is terminated by the GOVERNMENT 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 GOVERNMENT is to the total amount of work provided for herein, as determined by mutual agreement between the GOVERNMENT and the CONSULTANT.
- 6.2.3** GOVERNMENT reserves the right to terminate the Agreement at any time upon thirty days written notice to the CONSULTANT.
- 6.2.4** In the event the services of the CONSULTANT are terminated by the GOVERNMENT 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 GOVERNMENT.

7.0 SUCCESSORS AND ASSIGNS

- 7.1** The 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. The 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 the GOVERNMENT.
- 7.2** 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.

8.0 Optional Tasks and Services

- 8.1** GOVERNMENT 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

“Optional Task and Services,” subject to a change order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore.

- 8.2** Work under such change order shall not proceed until written authorization is given by the GOVERNMENT. This work shall be considered as “Optional Work & Tasks” and shall be paid on a lump sum basis by task in accordance with the negotiated rates as provided by the CONSULTANT in Exhibit C.

10.0 EQUAL EMPLOYMENT OPPORTUNITY

- 9.1** The CONSULTANT agrees to comply with Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Order 11375 and 12086.

- 9.2** The CONSULTANT will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age, disability or other handicap. The CONSULTANT shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, national origin, sex, age, disability or other handicap. The CONSULTANT will take affirmative action to insure that all employment practices include, but are not limited to, the following: employment, hiring, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection of 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.

- 9.3** A Compliance with Civil Rights Act of 1964. During the performance of this AGREEMENT, the CONSULTANT agrees as follows:

- 9.3.1** The CONSULTANT will comply with the regulations relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this AGREEMENT.

- 9.3.2** Nondiscrimination: The CONSULTANT with regard to the work performed by it after award and prior to completion of the AGREEMENT work will not discriminate on the ground of race, color, or national origin in the selection and retention of subcontractors including procurement of materials and leases of equipment. The CONSULTANT will not

participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.

- 9.3.3** Solicitations for subcontractors, including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by the CONSULTANT for work to be performed under a subcontract including procurement of materials or equipment, each potential subcontractors or supplier shall be notified by the CONSULTANT or the CONSULTANT'S obligations under this AGREEMENT with the REGULATIONS relative to nondiscrimination on the ground of race, color, or national origin.
- 9.3.4** Information and Reports: the CONSULTANT will provide all information and reports required by the REGULATIONS, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the GOVERNMENT to be pertinent to ascertain compliance with such REGULATIONS orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT will so certify to the GOVERNMENT as appropriate, and shall set forth what efforts it has made to obtain the information.
- 9.3.5** Sanctions for Noncompliance: In the event of the CONSULTANT'S noncompliance with the nondiscrimination provisions of this AGREEMENT, the GOVERNMENT will impose such contract sanctions as it may determine to be appropriate, including but not limited to:

 - 9.3.5.1** Withholding payment to the CONSULTANT under the AGREEMENT until the CONSULTANT complies; and/or
 - 9.3.5.2** Cancellation, termination or suspension of the AGREEMENT, in whole or in part.
- 9.4** It is the policy of the U.S. Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently the DBE requirements of 49 CFR Part 23 apply to this AGREEMENT.
- 9.5** DBE Obligation. The CONSULTANT or its subcontractors agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of

contracts and subcontracts financed in whole or in part with Federal funds provided under this AGREEMENT. In this regard the CONSULTANT or subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The CONSULTANT and the subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U. S. DOT – assisted contracts.

The CONSULTANT will make every effort to locate DBEs to purchase materials and services for use in this AGREEMENT. The CONSULTANT shall document the steps it has taken to obtain DBE participation, including, but not limited to the following:

- 9.5.1** The names, addresses, and telephone numbers of DBEs that were contacted;
- 9.5.2** A description of the information provided to DBEs regarding the type of work to be performed.

10.0 RIGHT TO REVIEW, AUDIT AND INSPECT

The CONSULTANT understands and agrees that upon reasonable notice that officials of the Lexington-Fayette Urban County Government, the Kentucky Transportation Cabinet, and the Federal Highway Administration may review, audit, and inspect any and all of the CONSULTANT'S records and operations relative to the services performed under this Agreement to assure compliance with the Agreement.

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

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

ATTEST:

Clerk of the Urban County Council

BY: _____
Jim Gray
MAYOR

AECOM
500 West Jefferson, Suite 1600
Louisville, KY 40202

(Secretary)

BY: _____
ITS: _____

(Witness)

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