

## **CONSULTANT SERVICES AGREEMENT**

**THIS IS AN AGREEMENT** made as of Wednesday, March 5, 2025, between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (OWNER)** and **TUNNEL-SPANGLER & ASSOCIATES, INC. d/b/a TSW. (CONSULTANT)**.

**WHEREAS, OWNER** intends to proceed with the Blue Sky Small Area Plan in Lexington, Kentucky as described in the attached Request for Proposal document; and

**WHEREAS**, the requested services are to include professional services for development of a master plan for the city (“Project”) as contemplated in the **OWNER’s** Request for Proposal No. 2-2025.

**WHEREAS, CONSULTANT** was selected by **OWNER** based upon its response to the Request for Proposal No. 2-2025.

**WHEREFORE, OWNER** and **CONSULTANT** in consideration of the foregoing, the sufficiency of which is hereby acknowledged, the **OWNER** and the **CONSULTANT** agree to the following mutual covenants and conditions:

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

**CONSULTANT** shall perform professional services as hereinafter stated, which shall include development of the Blue Sky Small Area Plan.

The following documents are incorporated by reference herein as if fully stated and are attached hereto as exhibits: RFP No. 2-2025 (Exhibit “A”); Consultant’s Response dated February 14, 2025 (Exhibit “B”); as well as additional services labeled optional tasks “C” and “D” as identified in the consultant's response dated February 14, 2025 (Exhibit B).

To the extent there is conflict among their provisions, the provisions of this Agreement shall take precedence, followed by the provisions of Request for Proposal No. 2-2025 (Exhibit “A”), and Consultant’s Response dated February 14, 2025 (Exhibit “B”).

After written authorization to proceed with the **PROJECT, CONSULTANT** shall:

1. Notify the **OWNER** in writing of its authorized representative who shall act as Project Manager and liaison representative between the **CONSULTANT** and the **OWNER**.
2. On the basis of “Selection Criteria” in the "Request for Proposal", attached in Exhibit “A”, conduct inventories and gather other necessary data or information, prepare/perform all required deliverables listed in the Request for Proposal, and the Response to the Request for Proposal. See exhibits “A”, and “B”, for complete listing of all deliverables, including optional tasks “C” and “D” as identified in the consultant's response dated February 14, 2025 (Exhibit B).

This Agreement together with the Exhibits identified above constitutes the entire Agreement between **OWNER** and **CONSULTANT** and supersedes all prior written or oral understandings. This Agreement and said Exhibits may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

The General Condition provisions of RFP No. 2-2025 are incorporated herein by reference as if fully stated.

## **SECTION 2 - ADDITIONAL SERVICES 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 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 **CONSULTANT** shall make such revisions as directed, in writing, by the **OWNER**. This work shall be considered as "Additional Services" and shall be paid as such.
- 2.2. All "Additional Services" is subject to prior written authorization of **OWNER** and necessary appropriations made by the Lexington Fayette Urban County Council.

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

### **OWNER shall:**

- 3.1. Assist **CONSULTANT** by placing at his disposal available information pertinent to the Project.
- 3.2. 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**.
- 3.3. 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.
- 3.4. 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).
- 3.5. Furnish or direct **CONSULTANT** 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. CONSULTANT shall commence services no later than May 1, 2025, shall finalize Project deliverables on or before April 30, 2026, and Project completion on or before May 31, 2026.
- 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.

## **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 services rendered a fee not exceeding \$486,000. The **CONSULTANT** will provide services as outlined in this Agreement.

### **5.2 Times of Payment.**

**OWNER** shall make payment under this Agreement upon timely submission of an invoice(s) from **CONSULTANT** specifying that the services have been performed, accompanied by data satisfactory to **OWNER** to document entitlement to payment for the services performed to date. **OWNER** shall have thirty (30) days from the date of receipt of the invoice to pay the invoice amount. **OWNER** reserves the right to refuse payment if it is determined by **OWNER** that the services performed, or materials provided for the services are inadequate or defective.

### **5.2. 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 – 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 ten (10) day period.

**6.1.2.** The **OWNER** reserves the right to terminate the Agreement for any reason at any time upon ten (10) days written notice to the **CONSULTANT**.

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

All documents, including GIS Data, 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**.

### **6.2. Legal Responsibilities and Legal Relations.**

**6.3.1.** The **CONSULTANT** shall familiarize themselves 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 **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 **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.

### **6.3. Successors and Assigns.**

**6.3.1. CONSULTANT** binds itself and its 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. **CONSULTANT** 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**.

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

**6.4. 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 Division of Central Purchasing and the **CONSULTANT**, shall be submitted to the Commissioner, Department of Planning and Preservation, 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**.

**6.5. 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**.

**6.6. Access to Records.**

The **CONSULTANTS** and their 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** service agreements.

**6.7. Required Risk Management Provisions.**

The Risk Management Provisions of RFP No. 2-2025 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 **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.


**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: \_\_\_\_\_

**CONSULTANT (TUNNELL, SPANGLER, & ASSOCIATES INC, d/b/a TSW):**

Signature:   
CALEB P. RACICOT

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

Position: CORP SECRETARY / PRINCIPAL

Date: MARCH 5, 2025